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Offshore Electricity Transmission: Tender Rules for the Second Transitional Tender Round (Tranche B Exercise)

Tender Document

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Overview:

The regulatory regime for offshore electricity transmission enables the Authority to grant Offshore Transmission Licences on the basis of a competitive tender process. Ofgem is responsible for managing this process.

This document sets out the Tender Rules relating to Tranche B of the second transitional Tender Round, which will lead to the granting of an Offshore Transmission Licence in respect of the West of Duddon Sands project.

Context

Electricity generated from offshore renewable sources is expected to make an important contribution towards the UK achieving its renewable energy targets by 2020. Fit for purpose offshore electricity transmission infrastructure is required to transfer the electricity generated offshore to the onshore network and ultimately to consumers. It is important that this infrastructure is developed in a timely, secure and cost-effective manner. It should also provide best value to present and future electricity consumers, while reflecting the requirements of generators and ensuring that, as far as possible, offshore infrastructure develops in a co-ordinated manner.

The Department of Energy and Climate Change (DECC¹) and Ofgem² have developed a regulatory regime for offshore electricity transmission. It was consulted on extensively and refined over four years, culminating in a final statement published in June 2009³.

A key part of the regime is that Offshore Transmission Licences can be granted following a competitive tender process run by Ofgem, with the Successful Bidder becoming the Offshore Transmission Licensee ('OFTO'). The result will be that the generating assets (offshore wind farms) will be owned and operated by the generator, whilst the Offshore Transmission System, which connects the offshore wind farms to the onshore transmission system, will be owned and operated by the OFTO Licensee.

The Offshore Transmission Licences will place certain rights and responsibilities on OFTOs, including the right to a regulated revenue stream for a period of 20 years in return for the provision of Transmission Services.

Associated documents

These Tender Rules apply to the second transitional Tender Round (Tranche B) and should be read in conjunction with the following documents:

- The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (the 2010 Regulations)⁴
- The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 (the 2013 Regulations)⁵
- Cost Recovery Methodology for the Second Transitional Tender Round, 20 March 2013⁶

Links to the relevant guidance documents are provided throughout this document. The Developer and Bidders should also be familiar with the standard industry framework documents that underpin the GB transmission market for example, the relevant industry codes⁷ and technical standards.

¹ And its predecessors, the Department for Trade and Industry and the Department of Business, Enterprise and Regulatory Reform

² The Gas and Electricity Markets Authority is the regulator of gas and electricity markets in Great Britain. Ofgem is the Office of Gas and Electricity Markets, which supports the Authority in performing its statutory duties and functions. It is the Authority which is responsible for exercising the relevant statutory powers. Whilst the terms 'Ofgem' and 'the Authority' are used interchangeably in these Tender Rules, it is the Authority which is responsible for exercising the relevant statutory powers.

³ This can be found via the following link:

www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/Main.pdf

⁴ <http://www.legislation.gov.uk/ukxi/2010/1903/contents/made>

⁵ <http://www.legislation.gov.uk/ukxi/2013/175/contents/made>

⁶ <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Pages/rttt.aspx>

⁷ Further details on the codes: <http://www.ofgem.gov.uk/NETWORKS/OFFTRANS/SF/Pages/sf.aspx>

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Executive Summary

This document, in conjunction with the Tender Regulations, sets out the rules that the Developer and Bidders should comply with in participating in the second transitional Tender Round (Tranche B) for the grant of an Offshore Transmission Licence in respect of the West of Duddon Sands project. A material breach of these Tender Rules or the Tender Regulations by the Developer or a Bidder could result in disqualification from this Tender Round.

Electricity generated from offshore renewable sources is expected to make an important contribution towards the UK achieving its renewable energy targets by 2020. As part of the regulatory regime introduced by government in June 2009 to ensure cost effective development of offshore transmission infrastructure, licences for offshore electricity transmission are granted by means of a competitive tender process, run by Ofgem.

This document outlines the context for Ofgem running the second transitional Tender Round (Tranche B) for the grant of an Offshore Transmission Licence in respect of the West of Duddon Sands project. It sets out Ofgem's role in running the competitive tender process and provides an overview of the legal framework underpinning the process.

This document provides an overview of the key stages within a Tender Round and explains how Ofgem expects to run the second transitional Tender Round (Tranche B), including a provisional timeline of key stages. These key stages include:

- Qualification of Projects;
- Tender Entry;
- Pre-Qualification (PQ) Stage;
- Qualification to Tender (QTT) Stage;
- Invitation to Tender (ITT) Stage;
- Best and Final Offer (BAFO) Stage;
- Preferred Bidder (PB) Stage; and
- Successful Bidder (SB) Stage.

This document outlines the main involvement of the Developer and Bidders within this Tender Round and sets out rules for parties participating in, and exchanging information during this Tender Round. This includes detailed rules in relation to making Submissions, clarifications and using the Portal. This document sets out the consequences of not adhering to the rules and highlights throughout where certain events of disqualification and cancellation apply.

Finally, this document provides further details on each stage of this Tender Round, including the purpose of each stage, the key activities and the stage-specific requirements on the Developer and Bidders.

1. Introduction

Chapter Summary

This chapter provides background to the offshore transmission regime in relation to the tender process including the legal framework.

Legal Framework

- 1.1. The Electricity (Competitive Tenders for Offshore Transmission Licence) Regulations 2010 (the '2010 Regulations') apply to current Tender Exercises that met the Qualifying Project requirements set out in the 2010 Regulations by 31 March 2012
- 1.2. The Electricity (Competitive Tenders for Offshore Transmission Licence) Regulations 2013 (the '2013 Regulations') came into force on 22 February 2013. The 2013 Regulations set out the tender process framework for granting an Offshore Transmission Owner (OFTO) Licence, including how Ofgem will run future tenders under both the generator build and OFTO build options. Current Tender Exercises being run under the 2010 Regulations will remain subject to the 2010 Regulations, except for the Qualifying Project in the second transitional Tender Round (Tranche B) in respect of West of Duddon Sands, which became subject to the 2013 Regulations from 22 February 2013.
- 1.3. In accordance with Regulation 2 of the 2013 Regulations, where the Authority has not given notice in relation to the payment for the Invitation to Tender (ITT) Stage of a Tender Exercise by 22 February 2013, the process for grant of an Offshore Transmission Licence for that Qualifying Project will be subject to the 2013 Regulations. For the Qualifying Project in the second transitional Tender Round (Tranche B) in respect of West of Duddon Sands, this means that the Pre-Qualification (PQ) Stage was carried out under the 2010 Regulations and the remainder of the Tender Exercise will be carried out under the 2013 Regulations.
- 1.4. In accordance with the Tender Regulations, Ofgem has published these Tender Rules in order to inform Bidders in further detail, in addition to the Tender Regulations, about how Ofgem will run the Tender Exercises subject to the Tender Regulations. Further information on the Tender Regulations and the Tender Rules are available on Ofgem's website⁸.

Tender Rules

- 1.5. These Tender Rules are published by Ofgem pursuant to Regulation 11(4) of the 2013 Regulations.
- 1.6. These Tender Rules supplement the Tender Regulations and have been prepared in order to inform the Developer, Bidders and other interested parties about how Ofgem will run the second transitional Tender Round (Tranche B). They set out the requirements, expectations and obligations on the Developer and Bidders involved

⁸ <http://www.ofgem.gov.uk/Pages/OfgemHome.aspx>

in the second transitional Tender Round (Tranche B). In reading these Tender Rules, the Developer and Bidders should be aware of the important disclaimers and notices within Appendix 1. Definitions of terms used within these Tender Rules are detailed within the Glossary in Appendix 3.

- 1.7. These Tender Rules are based on the Tender Rules for the previous transitional Tender Rounds but have been amended to reflect feedback gathered from Developers and Bidders, to reflect developments over the course of the previous transitional Tender Rounds and to align these Tender Rules with the applicable Tender Regulations.
- 1.8. In participating in the second transitional Tender Round (Tranche B), the Developer and each Bidder must comply with the Tender Regulations and these Tender Rules. A material breach of these Tender Rules or the Tender Regulations by the Developer or a Bidder could result in disqualification from this Tender Exercise.

The Offshore Transmission Regime

- 1.9. The regulatory regime for offshore transmission encompasses both a Transitional Regime and an enduring regime.
- 1.10. Under the Transitional Regime Developers are able to construct Transmission Assets which are then transferred to an OFTO appointed through the competitive tender process run by Ofgem. The Developer will transfer ownership of the completed Transmission Assets to a licensed OFTO at a transfer value set by Ofgem following an assessment of costs. OFTOs will then maintain the asset in accordance with the requirements of the Offshore Transmission Licence. For transitional projects, the role of the OFTO therefore is to finance, own and operate an asset that has been constructed by the Developer.
- 1.11. In June 2009 the Secretary of State of Energy and Climate Change commenced powers to enable modifications to be made to the industry codes and licences for the purposes of offshore transmission ('Go Active'). Following Go Active, Ofgem launched the first transitional Tender Round, which commenced on 22 July 2009, in accordance with the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009⁹.
- 1.12. These Tender Rules cover the second transitional Tender Round (Tranche B) run by Ofgem under the Transitional Regime in order to identify a Successful Bidder to be granted an Offshore Transmission Licence in respect of the West of Duddon Sands project.
- 1.13. Further details on the requirements, process and timescales for the second transitional Tender Round (Tranche B) are provided within Section 2.

⁹ SI 2009/1340

2. Overview of the Tender Process

Chapter Summary

This chapter provides background to the offshore transmission regime in relation to the tender process.

- 2.1. The principal powers and duties of the Authority include the principal objective to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.
- 2.2. Under section 6(1)(b) of the Electricity Act, the Authority can grant a licence authorising a person to participate in the transmission of electricity. This extends to include offshore transmission¹⁰. Ofgem also has an ongoing role to ensure compliance of licensees with the provisions of the Offshore Transmission Licence.
- 2.3. Section 6C of the Electricity Act allows Ofgem to make regulations to run a competitive tendering process in order to determine Successful Bidders who will be granted Offshore Transmission Licences. Ofgem will have regard to its principal objectives and general duties when running the tender process.
- 2.4. The Energy Act 2008 amended Schedule 2A of the Electricity Act to give Ofgem the ability to make a property transfer scheme (in respect of the Transitional Regime) and the ability to recover its costs for running a competitive tender process. See the Cost Recovery Methodology for details of how Ofgem intends to recover its costs for the second transitional Tender Round. See paragraphs 2.37 to 2.41 for further details on the Schedule 2A Property Transfer Scheme.

The Competitive Tender Process

- 2.5. Ofgem has, where practicable, developed the competitive tender process in accordance with best practice principles. The key objectives of the competitive tender process are:
 - the delivery of fit for purpose transmission infrastructure to connect offshore generation;
 - the provision of certainty and best value to consumers through the competitive process; and
 - attracting new entrants to the sector.

¹⁰ Section 4(4) of the Electricity Act (as amended by section 89 of the Energy Act 2004) and section 91 of the Energy Act 2004

The Tender Regulations and the Tender Rules

- 2.6. The Tender Regulations provide the legal framework for the competitive tender process. The Tender Regulations require Ofgem to publish the Tender Rules and the Cost Recovery Methodology for the second transitional Tender Round in advance of the date on which the first Tender Exercise is to be commenced. In accordance with the Tender Regulations, Ofgem published the Tender Rules for the Second Transitional Tender Round on 17 November 2010¹¹ and the Cost Recovery Methodology for the second transitional Tender Round was first published in September 2010 and updated in December 2011. A further updated version of the Cost Recovery Methodology was published on 20 March 2013 alongside these revised Tender Rules for the second transitional Tender Round (Tranche B)¹².
- 2.7. The Tender Regulations also require Ofgem to publish any rules particular to the Pre-Qualification (PQ), Qualification to Tender (QTT), Invitation to Tender (ITT) and, if applicable, Best and Final Offer (BAFO) Stages of a Tender Exercise as part of the relevant stage documentation. Ofgem will publish the stage-specific rules in advance of the start of each of these stages. The PQ Documentation for the second transitional Tender Round (Tranche B) was published on 14 December 2012 and the PQ Stage has now been completed. Ofgem will publish further stage-specific rules in advance of the start of each of the remaining stages. In the event of any conflict between these Tender Rules and any of the stage-specific rules, the stage-specific rules take precedence.
- 2.8. These Tender Rules may be updated in documents issued subsequently by Ofgem as part of the second transitional Tender Round (Tranche B), such as the stage-specific rules referenced above. Ofgem may also publish revisions to these Tender Rules during the course of the second transitional Tender Round (Tranche B).
- 2.9. These Tender Rules inevitably describe certain matters which are dealt with in the Tender Regulations but the Tender Rules are not, and should not be seen as, a substitute for a proper understanding of the Tender Regulations. All Developers, Bidders and other interested parties are strongly encouraged to become thoroughly familiar with the Tender Regulations in addition to these Tender Rules. In the event of any conflict between the Tender Rules and the Tender Regulations, the Tender Regulations take precedence.
- 2.10. The Tender Regulations set out Ofgem's main role in relation to the second transitional Tender Round (Tranche B), which is to:
- determine the projects (i.e. Transmission Assets) that qualify for the Tender Round;
 - run competitive Tender Exercises in order to determine Successful Bidders who will be granted Offshore Transmission Licences for each Qualifying Project; and
 - calculate the economic and efficient costs incurred in connection with developing and constructing the Transmission Assets for each Qualifying Project.

¹¹ Offshore Electricity Transmission: Tender Rules for the Second Transitional Tender Round:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=7&refer=Networks/offtrans/rttt>

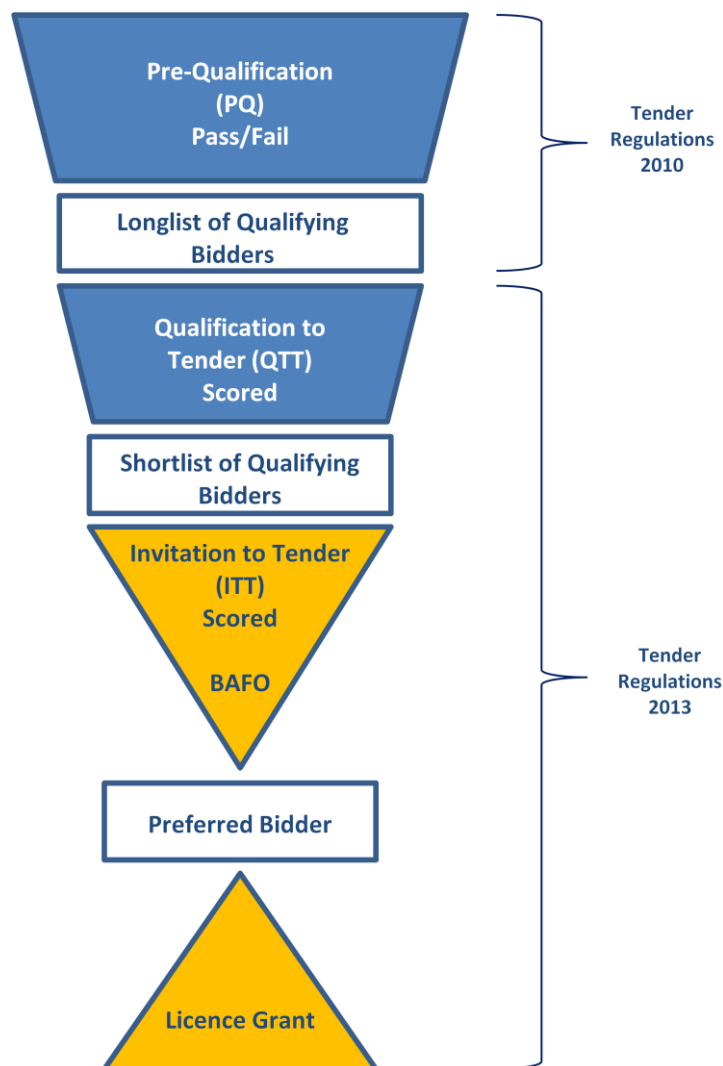
¹² Offshore Electricity Transmission: Cost Recovery Methodology for the Second Transitional Tender Round (v1.2) <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Pages/rttt.aspx>

Determining Qualifying Projects

- 2.11. West of Duddon Sands is a Qualifying Project for the purposes of the 2010 Regulations and was subject to the Tender Entry Conditions set out in the 2010 Regulations. For completeness, Section 5 provides details of the Tender Rules, based on the 2010 Regulations, which applied to the West of Duddon Sands project at that time.
- 2.12. Projects which did not qualify for the second transitional Tender Round (Tranche B) have the opportunity to be considered as part of the enduring regime.

Overview of this Tender Exercise

- 2.13. The principal stages involved in this Tender Exercise in respect of the West of Duddon Sands project is shown below (these stages are described in more detail in sections 6 to 11).
- 2.14. Principal stages involved in this Tender Exercise in respect of the West of Duddon Sands project:



Provisional Timelines

2.15. The provisional timeline for this Tender Exercise in respect of the West of Duddon Sands project is as follows:

Stage	Date documentation issued by Ofgem	Date for Submissions to Ofgem
PQ (completed)	14 December 2012	18 January 2013
QTT	20 March 2013	1 May 2013
ITT	June 2013	Q3 2013
Preferred Bidder announced	Q4 2013	N/A

2.16. Ofgem may amend the timeline at its discretion and at any time.

Variation of this Tender Exercise

2.17. Subject to the provisions of the Tender Regulations Ofgem may vary any element of this Tender Exercise in respect of the West of Duddon Sands project (including the indicative timeline referred to above), issue supplementary documentation or make additional arrangements at any time in order to clarify any issue or amend any aspect of this Tender Exercise. Any such variation shall only take effect so as to actually vary this Tender Exercise if subsequently confirmed in writing. This includes where Ofgem determines that it is impracticable to complete any action, or to deliver or publish any document or notice, by the time, date or in the manner specified within the Tender Regulations. Ofgem may decide to extend this Tender Exercise and postpone any Submission date in the event of any such amendment.

2.18. Further rules (in addition to those stage-specific rules detailed within paragraph 2.7) may be issued at each stage of this Tender Exercise or in any supplementary documentation. Where this occurs, those rules should be read in conjunction with these Tender Rules.

2.19. Where the above paragraphs apply, Ofgem will seek to notify the Developer and Bidders within a reasonable time period.

Cost Estimate/Assessment

- 2.20. Ofgem must calculate, based on all relevant information available to it at the time, the economic and efficient costs which ought to be, or ought to have been, incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project. This process will enable Ofgem to determine the Final Transfer Value (defined below) for these Transmission Assets when they are transferred from the Developer to the Successful Bidder in respect of a Qualifying Project.
- 2.21. Where the construction of the Transmission Assets has not reached the stage when those Transmission Assets are available for use for the transmission of electricity, this calculation will take the form of an estimate of the costs which ought to be incurred in connection with the development and construction of those Transmission Assets.
- 2.22. For the purposes of commencing a Tender Exercise Ofgem will include the cost information that the Developer has provided in respect of a Qualifying Project within the PQ Documentation as the 'Initial Transfer Value' for the purpose of Bidders' PQ Submissions. Use of this information at the PQ Stage is not an endorsement by Ofgem of the basis on which the Developer derived their estimated costs or any assumptions or methodology that the Developer used in their calculations; it will simply be used for the purpose of commencing a Tender Exercise.
- 2.23. During the PQ Stage, Ofgem will review and analyse this cost information and may request further information from the Developer to calculate, in respect of a Qualifying Project, our estimate of the economic and efficient costs which ought to be incurred in connection with the development and construction of the relevant Transmission Assets. This estimate is the 'Indicative Transfer Value' which will be included in the ITT Documentation for the purposes of Qualifying Bidders' ITT Submissions.
- 2.24. Ofgem may decide not to take into account any information that is provided after the date, as specified by Ofgem, in accordance with undertaking any cost assessments.
- 2.25. The Developer must pay the costs associated with the estimate of costs (including any updates to it), as set out within the Cost Recovery Methodology.
- 2.26. Where the construction of the Transmission Assets has reached the stage when those Transmission Assets are available for use for the transmission of electricity, Ofgem shall assess the costs which have been or ought to have been incurred in connection with the development and construction of those Transmission Assets. The assessment of costs shall be used by Ofgem to determine the value of the Transmission Assets to be transferred to the Successful Bidder in respect of a Qualifying Project (the 'Final Transfer Value').
- 2.27. Ofgem intends to commence the process for the assessment of costs during the Preferred Bidder Stage of a Tender Exercise in respect of a Qualifying Project. It is expected that Ofgem's assessment of costs and determination of the Final Transfer Value for a Qualifying Project will be concluded prior to the grant of an Offshore Transmission Licence to a Successful Bidder. If, under exceptional circumstances this is not possible then Ofgem may determine that deferred consideration would

be paid by the OFTO to the Developer on conclusion of our cost assessment. Further details can be found in the Guidance Note to Asset Transfer¹³.

- 2.28. The Successful Bidder must pay the costs associated with Ofgem's assessment of costs, as set out within the Cost Recovery Methodology.

Re-Run

- 2.29. The Tender Regulations specify certain events which may result in a re-run of a Tender Exercise. In the event of a re-run, the Tender Exercise may be re-run from the beginning of the Tender Exercise or from a particular stage. Should Ofgem be unable to identify a Preferred Bidder, Reserve Bidder or Successful Bidder following a re-run, Ofgem may either;

- further re-run the Tender Exercise from the beginning of a particular stage; or
- cancel the Tender Exercise.

- 2.30. The Developer and Bidders are strongly advised to fully familiarise themselves with events of re-run at Schedule 7 of the 2013 Regulations.

Cancellation and Disqualification

- 2.31. These Tender Rules highlight certain events which may result in cancellation or disqualification of a Tender Exercise. However, this is a non-exhaustive list and the Developer and Bidders are strongly advised to fully familiarise themselves with the sections on disqualification and cancellation within the Tender Regulations (including the events of cancellation and disqualification¹⁴).

Consequences of Cancellation

- 2.32. Where Ofgem decides that this Tender Exercise in respect of the West of Duddon Sands project has failed, Ofgem may seek to appoint an OFTO through the OFTO of Last Resort mechanism referenced within paragraph 2.41.
- 2.33. The cost consequences of cancellation for the Developer and Bidders are set out in the Cost Recovery Methodology.

Consequences of Disqualification

- 2.34. If a Bidder is disqualified, Ofgem will not consider any Submission from that Bidder for the purpose of determining the Successful Bidder in respect of the West of Duddon Sands project.

¹³ <http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Guidance%20Note%20Asset%20Transfer%20TR2B.pdf>

¹⁴ Schedules 8 and 9 respectively to the Tender Regulations 2013

- 2.35. Upon request, Ofgem will provide feedback to any disqualified Bidder or the Developer. Any request for feedback must be made within one month of a Bidder or the Developer receiving notification that it has been disqualified.
- 2.36. The cost consequences of disqualification for the Developer and Bidders are set out in the Cost Recovery Methodology.

Schedule 2A Property Transfer Scheme

- 2.37. The Energy Act 2008 introduced the ability for Ofgem to make a property transfer scheme (in respect of the Transitional Regime), to expedite the transfer of property, rights and liabilities required by an OFTO to perform its functions, for example in situations where commercial agreement has not been reached.
- 2.38. A Preferred Bidder or Successful Bidder (as applicable) and/or the Developer may at any time apply to Ofgem for a property transfer scheme pursuant to paragraph 3 of Schedule 2A to the Electricity Act. If the application were successful, Ofgem would make a scheme to transfer property rights and liabilities from the Developer to the Successful Bidder.
- 2.39. Ofgem would only expect these property transfer scheme powers to be exercised as a last resort, with parties exhausting all possibilities to negotiate commercial arrangements before applying.
- 2.40. The process, timing, terms and other matters in relation to property transfer schemes are set out fully in Schedule 2A to the Electricity Act.

OFTO of Last Resort

- 2.41. There may be instances, including following cancellation of a Tender Exercise, where Ofgem would appoint an OFTO of Last Resort. The Developer and Bidders should familiarise themselves with Ofgem's Guidance on the Offshore Transmission Owner (OFTO) of Last Resort Mechanism¹⁵.

¹⁵http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/V0.3_OFTO_of_Last_Resort_Oct_2012.pdf

3. Participation Rules

Chapter Summary

This chapter sets out the main involvement of the Developer and Bidders in relation to the Tender Round including rules relating to contact between the Developer and Bidders, contact with Ofgem, Bidder Groups and changes to Bidder Groups, tender costs and withdrawal from this Tender Exercise and the Third Package of European legislation.

3.1. The main involvement of a Developer within the tender process is to:

- satisfy the Qualifying Project requirements and tender entry conditions. The West of Duddon Sands project is a Qualifying Project for the purposes of the second transitional Tender Round (Tranche B);
- provide necessary information to enable Ofgem to estimate and then assess the costs incurred in connection with developing and constructing the Transmission Assets in respect of a Qualifying Project - as detailed within paragraphs 2.20 to 2.28;
- make payments and provide Security to Ofgem as detailed within the Cost Recovery Methodology; and
- provide all relevant information to, and resolve all relevant matters with, the Preferred Bidder / Successful Bidder for the transfer of Transmission Assets for that Qualifying Project - see Sections 10 and 11 for further details.

3.2. The Developer should organise itself internally in preparation for this Tender Exercise including by ensuring that it obtains necessary board approvals, meets any deadlines set out by Ofgem and complies with the requirements of each stage of this Tender Exercise.

3.3. Developers may also participate in a Tender Exercise either as a Bidder, Qualifying Bidder or as part of a Bidder Group. However, as detailed within paragraph 5.33, in the event that the Developer decides to participate in any stage of a Tender Exercise either as a Bidder, Qualifying Bidder or as part of a Bidder Group, in respect of any Qualifying Project for which it is the Developer, it must put in place and maintain appropriate internal information barriers, to the satisfaction of Ofgem, to prevent information passing between the Developer and the Bidder, Qualifying Bidder or Bidder Group as the case may be.

3.4. The Developer should note that the following are included as events of disqualification under the Tender Regulations¹⁶:

- offering to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any officer of Ofgem or a Bidder (or any related party of these) in relation to any actions or omissions;
- engaging in any anti-competitive behaviour with any Developer or a Bidder;

¹⁶ Schedule 9 to the Tender Regulations 2013

- contacting a Bidder outside the requirements of the Tender Rules;
- a breach of any warranty or undertaking provided to Ofgem in accordance with the Tender Regulations, unless remedied within a specific period as notified to the Developer by Ofgem;
- failure to provide information requested under Regulation 4(3) or 6(3) of the 2013 Regulations to Ofgem, as required; and
- failure to comply with the Developer obligations in Regulation 21 of the 2013 Regulations, as further set out at Section 10 of these Tender Rules.

3.5. As detailed earlier, the Developer is however strongly advised to fully familiarise themselves with all the events of disqualification and cancellation detailed within the Tender Regulations.

Bidders

3.6. The main involvement of a Bidder within the tender process is to:

- make submissions to Ofgem where and when required at each stage of a Tender Exercise – see Sections 6 to 11 of these Tender Rules for further details;
- respond to clarification requests from Ofgem regarding submissions within a reasonable period – see Sections 6 to 11 for further details;
- make payments to Ofgem at each relevant stage of a Tender Exercise, as detailed within the Cost Recovery Methodology – see Sections 6 to 11 for further details; and
- provide all relevant information to, and resolve all relevant matters with, the Developer and any other relevant parties for the transfer of Transmission Assets for the West of Duddon Sands project - see Sections 10 and 11 for further details.

3.7. Bidders should note that the following are included as events of disqualification under the Tender Regulations¹⁷:

- committing an offence under Section 1, 2 or 6 of the Bribery Act 2010;
- collusion between two or more Bidders in relation to their Submissions;
- engaging in any anti-competitive behaviour with the Developer or any Bidder;
- contact by a Bidder with Ofgem outside the requirements of the Tender Rules; and
- contact by a Bidder with NETSO outside the requirements of the Tender Rules.

¹⁷ Schedule 9 to the Tender Regulations 2013

- 3.8. As detailed earlier, Bidders are however strongly advised to fully familiarise themselves with all the events of disqualification and cancellation detailed within the Tender Regulations.

Bidder Groups

- 3.9. Bidders may be a single person or may wish to collaborate with other persons to form a Bidder Group.
- 3.10. Where a person who makes a PQ Submission or Qualifying Bidder is acting on behalf of a Bidder Group, it must have express authority to act in this regard.
- 3.11. If a Bidder Group is chosen as the Preferred Bidder for the West of Duddon Sands project, Ofgem would expect a special purpose vehicle or similar, to be established prior to the grant of the Offshore Transmission Licence. This is because Ofgem is required to identify the person to whom an Offshore Transmission Licence is to be granted.

Changes to a Bidder Group

- 3.12. Where a Bidder Group wishes to change its membership it must notify Ofgem as soon as reasonably practicable. Ofgem will not recognise any change to the membership of a Bidder Group until Ofgem has given its permission for the change.
- 3.13. Where a Bidder Group seeks to change its membership between the PQ and QTT Stages, Ofgem will reassess whether the revised Bidder Group meets the criteria set out in the PQ Documentation as part of its QTT Submission. Ofgem will permit that change provided that the new membership meets the selection criteria set out in the PQ Documentation.
- 3.14. Ofgem expects that the membership of, and the respective interests in, a Bidder Group should be finalised at the point at which the QTT Questionnaire is submitted. Where a Bidder Group seeks to change its membership after a QTT Questionnaire has been submitted it may be permitted, provided that;
- Ofgem determines that the change would be fair and equitable to all participating in this Tender Exercise; and
 - the new membership meets the evaluation criteria, as set out in the relevant stage documentation.
- 3.15. Where a Bidder Group seeks to change its membership subsequent to being notified as the Preferred Bidder it may be permitted, provided that;
- Ofgem determines that the change would be fair and equitable to all Bidders who were invited to participate in the latest stage of this Tender Exercise;
 - the new membership meets the evaluation criteria, as set out in the issued stage documentation; and
 - written confirmation is provided that the notifications required within the Preferred Bidder Stage remain resolved.

- 3.16. Bidders should note that any change to the membership of a Bidder Group that has not been approved by Ofgem, or any breach of the Tender Rules in respect of a Bidder Group, may result in disqualification from a Tender Exercise, as detailed within the Tender Regulations.
- 3.17. Where Ofgem has permitted any change to the membership of a Bidder Group, it may give notice to the Bidder Group of the amount of any relevant payment payable to Ofgem as calculated in accordance with the Cost Recovery Methodology.

Developer/Bidder Contact

- 3.18. The Developer and Bidders are reminded that collusion or anti-competitive behaviour between a Developer and a Bidder, or between Bidders, is an event of disqualification under the Tender Regulations.
- 3.19. Bidders are not allowed to contact the Developer, or vice versa, in relation to any aspect of the Tender Round, a Tender Exercise or any Qualifying Project. The exception to this is where otherwise specified in these Tender Rules (or as otherwise directed by Ofgem) – see paragraphs 3.20 and 3.21 below. Additionally, a Bidder should not attempt to contact another Bidder in relation to any aspect of a Tender Exercise or a Qualifying Project.
- 3.20. If, in advance of the Preferred Bidder Stage of a Tender Exercise, Ofgem decides to hold an event to which the Developer and Bidders are both invited (for example to provide the Developer with an opportunity to pitch their commercial proposals on operations and maintenance and/or insurance to Qualifying Bidders), Bidders and the Developer may not discuss or raise questions in relation to aspects of the West of Duddon Sands project other than those specified in the agenda / event papers.
- 3.21. The Developer will be provided with the contact details of the Preferred Bidder for their Qualifying Project once the Preferred Bidder is appointed. Contact between the Developer and Preferred Bidder is therefore permitted for the West of Duddon Sands project at that stage in order to finalise the commercial agreements for asset transfer. See Section 10 for further details.

Contact with Ofgem

- 3.22. Ofgem operates a team whose role is to liaise with the Developer both before and during this Tender Round. The contact details for the relevant point of contact within this team, which will be the Tender Coordinator, have been notified to the Developer and any change to these contact details will be notified. The Developer should not attempt to make contact with any member of Ofgem staff outside of the Offshore Transmission team or any of its Advisers in respect of the West of Duddon Sands Tender Exercise (unless Ofgem specifically instructs otherwise).
- 3.23. If a Bidder wants to contact Ofgem in relation to any aspect of a Tender Exercise or a Tender Round prior to the PB stage, it must do so via the Portal (see Section 4). A Bidder must not attempt to contact Ofgem or any of its Advisers in relation to any aspect of this Tender Exercise in any other way (unless Ofgem specifically instructs otherwise).

- 3.24. Ofgem may, at the start of each stage, issue a schedule of meetings (which may include briefing events, workshops, etc.) to Bidders and/or the Developer which they should attend. This schedule will set out the purpose and required attendees for each meeting.
- 3.25. Ofgem may send notices to the Developer and/or Bidders at the commencement of each stage of this Tender Exercise setting out what Ofgem requires of them in relation to that stage. This does not prejudice Ofgem's discretion to issue additional instructions to the Developer and/or Bidders at any other time in relation to this Tender Exercise or Tender Round.

Costs

- 3.26. The Developer and each Bidder will bear its own costs of participating in this Tender Exercise in respect of the West of Duddon Sands project and will be responsible for meeting the costs incurred by Ofgem in administering such Tender Exercise in accordance with the Tender Regulations. Details of costs and payments are set out separately in the Cost Recovery Methodology.
- 3.27. Failure by the Developer to make a payment or provide Security as required by Ofgem (in line with the Cost Recovery Methodology) pursuant to the Tender Regulations, unless Ofgem has permitted that payment or Security to be made or provided within a further period notified by Ofgem (which will be no later than the tender commencement date), is an event of cancellation under the Tender Regulations.
- 3.28. Failure by a Bidder to pay any amount required by Ofgem (in line with the Cost Recovery Methodology) pursuant to the Tender Regulations, unless that failure has been remedied within a period not exceeding ten days notified to the Bidder, is an event of disqualification under the Tender Regulations.
- 3.29. Ofgem is under no obligation and shall not accept any liability for any costs or expenses incurred by the Developer or any Bidder, including without limitation any unsuccessful Bidder, for any costs, expenses, damages or losses incurred in connection with this Tender Exercise.
- 3.30. The cost consequences for the Developer or a Bidder of withdrawal or disqualification from a Tender Exercise, or cancellation of a Tender Exercise, are detailed within the Tender Regulations and the Cost Recovery Methodology for the second transitional Tender Round (Tranche B). The Developer and Bidders are strongly advised to make themselves familiar with the relevant sections of those documents.
- 3.31. Any payment required to be made to Ofgem in relation to this Tender Exercise as calculated with Ofgem's Cost Recovery Methodology, must be made by a person specified in Section 6D(2)(a) of the Electricity Act 1989 and not by a member of the Developer group. This means that where the Developer comprises a group of entities, the entity which must make the payment to Ofgem is that which holds the connection off or the benefit of that connection offer.

Withdrawal from this Tender Exercise

- 3.32. The paragraphs below summarise the rights which the Developer and Bidders have to withdraw from this Tender Exercise.

The Developer

- 3.33. The Developer may withdraw the West of Duddon Sands project from this Tender Exercise at any time by giving written notice to Ofgem. Under the Tender Regulations, withdrawal by a Developer would give Ofgem the right to cancel this Tender Exercise.

Bidders

- 3.34. A Bidder who decides to withdraw from this Tender Exercise at any stage must give written notice to Ofgem as soon as possible after it has made the decision to withdraw.
- 3.35. If a person or Bidder Group that has made a PQ Submission or Qualifying Bidder fails to submit a QTT Questionnaire, a tender or BAFO within the date and time specified by Ofgem, it shall be deemed to have withdrawn from this Tender Exercise.
- 3.36. Subject to paragraph 3.37 below, if a person or Bidder Group that has made a PQ Submission or Qualifying Bidder withdraws from this Tender Exercise in respect of the West of Duddon Sands project, it may only be re-admitted to this Tender Exercise if:
- it joins a Bidder Group which is an existing Bidder or Qualifying Bidder; and
 - Ofgem consents to its addition to such Bidder Group.

If a Preferred Bidder, Reserve Bidder or Successful Bidder withdraws from this Tender Exercise, it will not be re-admitted to this Tender Exercise in respect of the West of Duddon Sands project.

European Union (EU) Third Energy Package

- 3.37. The government has implemented a package of European legislation on the liberalisation of EU gas and electricity markets (the "Third Energy Package") into domestic legislation through the Electricity and Gas (Internal Markets) Regulations 2011 (the "Third Package Regulations"). The measures of the Third Energy Package aim to ensure that the benefits of a competitive energy market can be realised. A key requirement of the Third Energy Package is ownership unbundling, meaning the separation of transmission interests (ownership and operation of transmission systems) from generation, production and supply activities. The Third Package Regulations have amended the Electricity Act to include the requirement for electricity transmission licensees to be certified as independent.
- 3.38. The Third Package Regulations designate the Authority as the body with the responsibility for administering the certification process. A person who holds a transmission licence and participates in the transmission of electricity for the purpose of giving a supply to any premises or enabling a supply to be given must ensure that they are certified by the Authority throughout that period. Offshore

Transmission Licensees need to be certified by the Authority as complying with the full ownership unbundling requirements.

- 3.39. All Bidders are advised to make themselves aware of the requirement for certification and to review the Third Package Regulations. Further information on the intended procedure for processing applications for certification under the ownership unbundling requirements can be found in the open letter dated 10 November 2011¹⁸, issued by Ofgem.
- 3.40. It is important to note that any decisions the Authority takes in relation to the second transitional Tender Round (Tranche B) are taken in its role as manager of the competitive tendering process pursuant to Section 6C of the Electricity Act and the Tender Regulations. Unless otherwise notified by Ofgem, any decision the Authority takes in relation to the second transitional Tender Round (Tranche B) should not be taken as a decision, or any indication of what decision may be taken, on certification.
- 3.41. Ofgem is not able to advise Bidders as to the provisions of the Third Package Regulations and strongly recommends that Bidders seek appropriate independent legal advice in this respect. However, Ofgem would welcome engagement with Bidders in relation to applications for certification.

¹⁸ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=95&refer=Europe>

4. Information Exchange

Chapter Summary

This chapter sets out the types of information to be exchanged between the Developer and Ofgem and between Bidders and Ofgem (and vice versa). It sets out the rules and processes for exchanging this information and the systems used by Ofgem to facilitate the secure exchange of information.

Information Provided by the Developer and Bidders

- 4.1. The Developer and Bidders are required to provide information to Ofgem during the second transitional Tender Round (Tranche B). The Developer and Bidders are reminded that it is an event of disqualification under the Tender Regulations to submit any information to Ofgem which is false or misleading, unless the provision of further information is acceptable to Ofgem.
- 4.2. For the Developer the information that may be required includes, but is not limited to:
 - information related to the West of Duddon Sands project for the purposes of satisfying the Qualifying Project requirements and tender entry conditions;
 - information related to establishing a Data Room;
 - providing sufficient information to enable Ofgem to issue both a Preliminary Information Memorandum (PIM) and Information Memorandum (IM);
 - responding to clarification requests from Ofgem; and
 - information in relation to Ofgem's estimate and assessment of costs incurred in connection with developing and constructing the Transmission Assets in respect of the West of Duddon Sands project (see paragraphs 2.20 to 2.28).
- 4.3. Where Ofgem requires the Developer to provide further information, Ofgem shall specify the date by which the information is to be provided.
- 4.4. For Bidders the information that may be required includes, but is not limited to:
 - information included within Submissions to Ofgem (including concerning the members and structure of their Bidder Group, where relevant); and
 - responding to clarification requests from Ofgem in relation to Submissions.
- 4.5. By participating in this Tender Round, the Developer and each Bidder shall be deemed to consent to the disclosure by Ofgem to its Advisers of any information given to Ofgem, either before or during this Tender Round by the Developer or each Bidder.

Tender Submissions

- 4.6. Ofgem will detail within the documentation made available to Bidders at the start of each stage of a Tender Exercise what information is required to be submitted, in what form/manner, and by when, by Bidders.
- 4.7. Only one Submission is permitted per Bidder for the West of Duddon Sands project and all Submissions must be made via the Portal (see paragraph 4.31 and Appendix 2).
- 4.8. Bidders must ensure that:
- the information they submit is true, accurate and complete; and
 - they act as the principal in this Tender Exercise in making their Submission and not as an agent for any undisclosed party.
- 4.9. Submissions may be made by a single person or by a Bidder Group. Bidder Groups are required to appoint a lead member or organisation authorised to make Submissions on behalf of the Bidder Group. Such lead member must instruct a duly authorised officer to sign the certificate of statements in accordance with the relevant requirements of the stage documentation.
- 4.10. Where Ofgem provide templates for Submissions on the Portal, all Submissions must be made in the templates provided and Ofgem will not accept Submissions in any other form.
- 4.11. All Submissions must be made by the specified deadline for each stage. Ofgem will not accept any late Submissions. If any unforeseen issue (e.g. technical issues with the Portal) prevents a Submission from being made by the specified deadline, then the Bidder must notify Ofgem of any such issue within a reasonable period before the specified deadline.
- 4.12. Ofgem is not bound to accept any Submission made by a Bidder.
- 4.13. Once a Submission has been made, the Bidder will receive confirmation that it has been received. Ofgem will not open any Submission until after the applicable deadline for making the Submission has expired.
- 4.14. Ofgem will check if each Submission is complete. If Ofgem identifies any omission(s) from the information required to be provided, it will notify the Bidder. That Bidder will then have a period of time (to be notified by Ofgem) in which to rectify the omission(s). In this event, Ofgem will only commence evaluation of the Submission following receipt of the requested information. Ofgem may disqualify a Bidder's Submission if any omitted information requested is not provided within the required time.
- 4.15. If, at any time following the making of a Submission, there are any material changes or proposed changes to the information provided in the relevant Submission, or a Bidder becomes aware that information previously submitted is no longer true or accurate, such Bidder must advise Ofgem as soon as is reasonably practicable. Where a Bidder informs Ofgem, or if Ofgem otherwise becomes aware, of any such material change or proposed change, Ofgem shall be

entitled to re-evaluate that Bidder's Submission in light of that material change or proposed change, subject to Ofgem being satisfied that proceeding with the re-evaluation would be fair and equitable to all Bidders.

Clarifications and Responses

- 4.16. All clarifications and responses must be made via the Portal (see paragraph 4.32 and Appendix 2).

Clarification requests from Bidders

- 4.17. If a Bidder needs clarification in respect of a stage or document in this Tender Exercise, it may request clarification from Ofgem. Ofgem will endeavour to provide a response as soon as reasonably possible, although it is likely that the timeframe within which it will respond will vary on a case-by-case basis depending on the nature of the clarification requested. Ofgem will endeavour to provide responses to all clarifications received prior to the clarification deadline specified in the stage-specific rules. Any clarification requests submitted after this point cannot be assured of receiving a response prior to the Submission deadline.
- 4.18. Ofgem may, where appropriate, forward a Bidder's clarification request to the Developer, to NGET or to the Crown Estate for a response. Where it does so, the identity of the Bidder that raised the clarification will remain confidential. In such an instance Ofgem will act as the intermediary in any clarification request, i.e. the details of the clarification and the response to it, will be managed and provided by Ofgem. No direct interface is permitted between a Bidder and the Developer, NGET or the Crown Estate (or vice versa) in respect of a clarification.
- 4.19. Ofgem's default position is, for reasons of transparency and fairness, to make responses to Bidders' clarifications available to all Bidders involved at the relevant stage of this Tender Exercise, although the identity of the Bidder that raised the clarification will remain confidential. However, if Ofgem considers that a Bidder's clarification is sufficiently specific and confidential to that Bidder, Ofgem may at its discretion opt to provide its response solely to that Bidder.

Clarification requests from Ofgem

- 4.20. Ofgem may issue a clarification request to a Bidder or the Developer, for example where information is unclear. The Developer and Bidders must respond to clarification requests issued by Ofgem within the period specified by Ofgem. Failure by a Bidder to respond to a clarification request within the period specified by Ofgem risks any clarification response from the Bidder not being considered as part of Ofgem's evaluation of their Submission at that stage of this Tender Exercise. Failure by the Developer to provide an undertaking in writing that it will respond to all queries from Ofgem within a reasonable period during this Tender Exercise is an event of cancellation under the Tender Regulations.

Evaluation of Submissions

- 4.21. Ofgem will publish details on evaluation criteria and process within the documentation issued at each stage of a Tender Exercise.

4.22. Ofgem will evaluate Submissions made by Bidders at each stage of a Tender Exercise against evaluation criteria in the following broad areas (although evaluation will not necessarily be limited to these areas):

- economic and financial standing;
- technical capability; and
- legal standing.

Confidentiality and Publicity

4.23. Qualifying Bidders and the Developer are required to sign a Confidentiality Agreement in respect of the West of Duddon Sands project prior to receiving the relevant Information Memoranda at the QTT Stage. Qualifying Bidders and the Developer must comply with their obligations under such an agreement and ensure compliance by their directors, employees, advisers, subcontractors, etc., as provided for under such agreements.

4.24. The Confidentiality Agreement signed by the Qualifying Bidder covers information received during the relevant tender stage.

4.25. The Developer and Bidders shall not undertake (or permit to be undertaken) at any time during this Tender Round any publicity activity with any section of the media in relation to the Tender Exercise for the West of Duddon Sands project, other than with the prior written agreement of Ofgem. Such agreement shall extend to the content of any publicity. In this paragraph the word 'media' includes (without limitation) radio, television, newspapers, trade and specialist press, the internet and e-mail accessible by the public at large and the representatives of such media.

Transfer Agreement

4.26. Under the Tender Regulations, the Developer must fill in a Transfer Agreement, as far as possible, with all relevant information available to it, in respect of the West of Duddon Sands project. Ofgem intend to share the Developer's project-specific Transfer Agreement with Qualifying Bidders at the QTT Stage in order to inform their QTT Submissions, provided Ofgem is satisfied that the project-specific Transfer Agreement is sufficiently advanced at the time. The project-specific Transfer Agreement will also inform Qualifying Bidders' ITT Submissions and discussions on asset transfer between Preferred Bidders and the Developer during the Preferred Bidder Stage of the Tender Exercise in respect of the West of Duddon Sands project.

4.27. In the first transitional Tender Round, a model Sale and Purchase Agreement was published on 22 July 2009. However, for the second transitional Tender Round, Ofgem published guidance on what Ofgem might expect to see and not see in a Transfer Agreement. This guidance¹⁹ is intended to assist the Developer in drafting the Transfer Agreement in respect of the West of Duddon Sands project.

¹⁹<http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Transfer%20Agreement%20Guidance%2030-11-11.pdf>

The Portal

- 4.28. Ofgem operates the Portal to provide access to information on the second transitional Tender Round (Tranche B) and to enable interested parties to participate in the second transitional Tender Round (Tranche B). It provides a channel for both communication and data exchange at all stages of this Tender Round. The Portal is provided by BravoSolution and is compliant with Office of Government Commerce standards.
- 4.29. Ofgem will use the Portal to circulate to relevant Bidders the documentation, instructions and information relating to the different stages of the Tender Exercise in respect of the West of Duddon Sands project. The table below illustrates the parties that will have access to particular documents via the Portal at specific stages of a Tender Exercise.

Document/Information relating to the West of Duddon Sands project	Access given to
PIM	Bidders and other interested parties
PQ Documentation	Bidders and other interested parties
IM	Qualifying Bidders who have signed the relevant Confidentiality Agreements(s)
QTT Documentation	Longlisted Qualifying Bidders
ITT Documentation	Shortlisted Qualifying Bidders
BAFO Documentation (if applicable)	Selected Qualifying Bidders
Data Room	Qualifying Bidders (Bidder view) Developer (Developer view)

- 4.30. The Developer is required to upload any information or data relating to the West of Duddon Sands project into the Data Room. The Data Room is a secure electronic data storage area, which will be made available to relevant Qualifying Bidders through the Portal. The West of Duddon Sands project has its own separate Data Room, which is to be populated and maintained by Ofgem with information provided by the Developer.
- 4.31. Bidders will be required to submit any information or data relating to the Tender Exercise for West of Duddon Sands project by uploading it via the Portal.
- 4.32. As detailed earlier, all Submissions, clarifications and responses must also be made via the Portal.
- 4.33. Further details on the Portal, including how it can be accessed and how it should be used, are set out within Appendix 2.

5. Qualifying Projects and Tender Entry

Chapter Summary

This chapter sets out the Qualifying Project requirements of including details of the tender entry conditions that need to be satisfied and the process of tender commencement.

Introduction

- 5.1. As at the date at which the West of Duddon Sands project became a Qualifying Project, the project was subject to the tender entry conditions set out in the 2010 Regulations.
- 5.2. The West of Duddon Sands project met the qualifying requirements by the statutory deadline of 31 March 2012 in order to qualify as a Qualifying Project in the second transitional Tender Round (Tranche B).
- 5.3. For the West of Duddon Sands project, a Tender Commencement Notice was published on 30 November 2012 and the Tender Exercise commenced on 14 December 2012.
- 5.4. Even though this stage has now concluded for the second transitional Tender Round (Tranche B), for completeness this Section 5 describes the requirements for being a Qualifying Project, based on the 2010 Regulations and as set out in the Tender Rules²⁰ applicable at the time.
- 5.5. The paragraphs below summarise the key activities associated with this stage.

Request to Commence a Tender Exercise

- 5.6. A Developer who wishes Ofgem to commence a Tender Exercise for their project must submit a written request to Ofgem to that effect.
- 5.7. Where a Developer requests that Ofgem commence a Tender Exercise for their project, Ofgem will determine whether that project is a Qualifying Project. This will require the Developer to provide Ofgem with evidence demonstrating that the project meets the Qualifying Project requirements set out in Schedule 1 of the 2010 Regulations (and summarised below).
- 5.8. In practice, Ofgem and the Developer of a potential Qualifying Project are likely to have held a number of informal discussions before a Developer formally requests that Ofgem commence a Tender Exercise for their project. These up-front discussions, whilst not mandatory, provide a valuable opportunity for both parties to share information regarding the project and manage expectations in terms of whether a project is likely to qualify. The prior sharing of information also helps Ofgem expedite the formal evaluation of a project against the Qualifying Project requirements, as detailed below.

²⁰<http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Tender%20Rules%20for%20the%20Second%20Transitional%20Tender%20Round.pdf>

Qualifying Project Requirements

- 5.9. The Qualifying Project requirements in respect of a transitional Tender Exercise are detailed in paragraph 2 of Schedule 1 to the Tender Regulations, and are that a Developer has:
- a) entered into a bilateral agreement with NGET in its capacity as NETSO, or entered into an agreement or accepted an offer of an agreement, with the relevant electricity Distribution Network Owner (DNO) to which the Transmission Assets are or are intended to be connected;
 - b) entered into an agreement for lease of the seabed with the Crown Estate Commissioners;
 - c) obtained all necessary consents and property rights for the Transmission Assets to be constructed and maintained and ensured that any such consents or property rights which are capable of being assignable to the Successful Bidder are so assignable;
 - d) completed construction of, or entered into all necessary contracts for the construction of the Transmission Assets and ensured that any such contracts are assignable to the Successful Bidder; and
 - e) secured financing to construct the Transmission Assets.

Determination of Qualifying Projects

- 5.10. Where a Developer can demonstrate in respect of its proposed project that it has satisfied all the Qualifying Project requirements set out above, then Ofgem will determine such project to be a Qualifying Project.
- 5.11. If Ofgem determines that a Developer has not satisfied the requirements in paragraph 5.9 (c), (d) or (e) above, Ofgem may nonetheless deem a project to be a Qualifying Project if it is satisfied that the Developer will use its reasonable endeavours to meet those requirements within a reasonable time period, by a date specified by Ofgem.

Notification of Qualifying Projects

- 5.12. Where Ofgem has determined that a project satisfies all the Qualifying Project requirements (see paragraph 5.9), Ofgem shall notify the Developer that their project is a Qualifying Project and shall also notify them of the tender entry conditions they must satisfy, and the level of payment and Security required before Ofgem can commence a Tender Exercise for their Qualifying Project – see paragraphs 5.18 and 5.21. Ofgem will also notify the Developer of the expected date of the commencement of the Tender Exercise for their Qualifying Project.
- 5.13. If Ofgem determines that a proposed project is not a Qualifying Project, then it will notify the relevant Developer, giving reasons for its decision. If the Developer disagrees with such decision, it may write to Ofgem within seven days specifying the grounds on which it disagrees. Ofgem will consider such representations and will notify the Developer of its decision and provide reasons for its decision.

Reasonable endeavours

- 5.14. Where Ofgem has determined a proposed project to be a Qualifying Project subject to the reasonable endeavours test detailed within paragraph 5.11, Ofgem shall notify the Developer that its request to commence a Tender Exercise relates to a Qualifying Project and shall also notify the Developer of the outstanding Qualifying Project requirements and of the reasonable time period within which these outstanding requirements must be satisfied. The time period for qualification into the second transitional Tender Round (Tranche B) was to extend no later than 31 March 2012.
- 5.15. Ofgem will also notify the Developer of the requirement to provide written updates every two months summarising progress towards meeting each of the outstanding Qualifying Project requirements. This will include a request that the Developer continue to provide new and updated information to populate the Data Room for its Qualifying Project as and when it becomes available. Ofgem will also notify the Developer of the expected date of the commencement of the Tender Exercise for its Qualifying Project (subject to the Developer satisfying the outstanding Qualifying Project requirements).
- 5.16. Once the Developer considers it has fully satisfied the outstanding Qualifying Project requirements, it should notify Ofgem in writing. If Ofgem determines that its Qualifying Project has satisfied the outstanding Qualifying Project requirements, it will notify the Developer accordingly, and will also notify it of the tender entry conditions it must satisfy, and the level of payment and Security required before Ofgem can commence a Tender Exercise for its Qualifying Project – see paragraphs 5.18 and 5.21.
- 5.17. If a Developer fails to satisfy the outstanding Qualifying Project requirements within the period specified by Ofgem, Ofgem may cancel the Tender Exercise in line with the provisions of the Tender Regulations.

Developer Payment and Security

- 5.18. Prior to the commencement of a Tender Exercise for a Qualifying Project, Ofgem will notify the Developer of the payment required in relation to Ofgem's costs for running the Tender Exercise (and the date by which this payment must be made). Further details are provided within the Cost Recovery Methodology.
- 5.19. Ofgem will also notify the Developer of the Security that must be provided to Ofgem, as described in the Cost Recovery Methodology.
- 5.20. Details of the consequences of not making payment or providing Security to the timelines specified by Ofgem are detailed in Section 2. In addition to those consequences, Ofgem cannot commence a Tender Exercise for a Qualifying Project until the Developer pays Ofgem the specified amount, and provides the specified level of Security, to cover Ofgem's tender costs.

Tender Entry Conditions

- 5.21. Once Ofgem is satisfied that a Qualifying Project has met all Qualifying Project requirements, it will notify the Developer of the entry conditions that must be satisfied before a Tender Exercise can commence for its Qualifying Project. The notification will include a request for specific information that a Developer must submit, by specified deadlines, in order that Ofgem can determine whether each tender entry condition has been met.
- 5.22. Qualifying Projects must satisfy all the tender entry conditions prior to the date notified by Ofgem. Some of these tender entry conditions must be satisfied prior to commencement of the Tender Exercise for a Qualifying Project, whereas Ofgem may permit others to be satisfied by a later date. Where this is the case, Ofgem will notify the Developer accordingly.
- 5.23. The Developer should be aware that if they do not meet the tender entry conditions by the specified date, Ofgem may cancel the Tender Exercise for its project.
- 5.24. The tender entry conditions are summarised below; however, please refer to paragraph 2 of Schedule 2 to the 2010 Regulations for the definitive list.

Information Memorandum (IM)

- 5.25. The Developer must provide information to Ofgem's satisfaction to enable Ofgem to issue an IM for the Qualifying Project. The IM is the document released by Ofgem to Qualifying Bidders at the QTT Stage (once they have entered into the Confidentiality Agreement referred to in paragraph 5.29) containing detailed information in relation to a Qualifying Project. The Developer will satisfy this condition by completing the IM template provided by Ofgem to a standard that Ofgem are satisfied with.
- 5.26. Although its completion is not a tender entry condition, Ofgem will also release a Preliminary Information Memorandum (PIM) at the PQ Stage. The PIM is meant to contain high level information only in relation to the Qualifying Project. The PIM will be released via the Portal once the Tender Exercise has commenced, and will also be available on Ofgem's website for interested parties to consider when responding to the PQ Documentation. In order to enable Ofgem to produce the PIM, the Developer will be provided with a standard form template and instructions for completion.
- 5.27. Ofgem will need to be satisfied that the information provided for both documents is appropriate and adequate and Ofgem may request further information from the Developer as necessary.

Data Room

- 5.28. The Developer must provide information to Ofgem's satisfaction to enable Ofgem to establish a Data Room for the Qualifying Project. The Developer will have provided information about its Qualifying Project which Ofgem used to assess its Qualifying Project status; however, further information will be required in order to fully establish the Data Room. To this end, Ofgem will provide Data Room Guidelines (published separately by Ofgem), which the Developer should adhere to

when populating the Data Room over the course of the Tender Exercise in respect of the Qualifying Project.

Confidentiality Agreement

- 5.29. The Developer must return a signed copy of the Confidentiality Agreement provided to it by Ofgem. This is an agreement between the Developer and each Qualifying Bidder for the Qualifying Project and must be signed by Qualifying Bidders at the QTT Stage. The Confidentiality Agreement provided by Ofgem should not be amended.

Transfer Agreement

- 5.30. The Developer must fill in a Transfer Agreement, as far as possible, with all relevant information available to it. Ofgem will provide Developers with guidance to assist them in the development of the Transfer Agreement for their Qualifying Project – as detailed within paragraph 4.27.

Transferability of Phased Assets²¹

- 5.31. The Developer must demonstrate to Ofgem's satisfaction that if the Transmission Assets for their Qualifying Project are being constructed in phases, the assets for each phase can be transferred to the Successful Bidder separately once they are available for use for transmission. If applicable, Ofgem will require the Developer to return a signed statement to this effect.

Undertakings

- 5.32. The Developer must give Ofgem a written undertaking that it will:
- provide information updates to Ofgem where information has changed, been updated, or where new information has become available in relation to its Qualifying Project, to enable Ofgem to update the Data Room;
 - respond to all queries from Ofgem (whether arising from Ofgem or from a third party) within a reasonable period;
 - continue to update the Transfer Agreement with all relevant information available to it; and
 - in the event that the Developer decides to participate in any stage of a Tender Exercise either as a Bidder, Qualifying Bidder or as part of a Bidder Group, in respect of any Qualifying Project for which it is the Developer, put in place and maintain appropriate internal information barriers, to the satisfaction of Ofgem, to prevent information passing between the Developer and the Bidder, Qualifying Bidder or Bidder Group, as the case may be.
- 5.33. A breach of any undertaking provided to Ofgem in accordance with the Tender Regulations, unless Ofgem permits that breach to be remedied within a period

²¹ The West of Duddon Sands project is not being constructed in phases so this requirement was not applicable. This requirement has also been removed from the Schedule 2 of the 2013 Regulations.

specified by Ofgem to the Developer, constitutes an event of disqualification under the Tender Regulations.

Information Warranty

- 5.34. The Developer must provide Ofgem with a written warranty stating that any information it provides in relation to the IM and Data Room for the Qualifying Project is to the best of its knowledge and belief, having made reasonable enquiries, true, accurate and complete and is not misleading in any material respects.
- 5.35. A breach of any warranty provided to Ofgem in accordance with the Tender Regulations, unless Ofgem permits that breach to be remedied within a period specified by Ofgem to the Developer, constitutes an event of disqualification under the Tender Regulations.

Other Conditions

- 5.36. Ofgem is able to specify other tender entry conditions which the Developer must satisfy before commencing a Tender Exercise where it deems it necessary. This could include a condition that the Developer must return a signed copy of the Confidentiality Consent provided by Ofgem (this is a consent that the Developer signs consenting to Ofgem using information provided to it in respect of the Tender Exercise).

Notification of Meeting Tender Entry Conditions

- 5.37. Ofgem will evaluate the information submitted by the Developer in order to determine whether each tender entry condition has been met. In evaluating whether the tender entry conditions have been met, the Developer may be required to provide additional information.
- 5.38. Ofgem will notify the Developer if it is satisfied that all tender entry conditions have been met.
- 5.39. If the Developer fails to satisfy any of the tender entry conditions by the date specified by Ofgem, Ofgem may notify the Developer and publish a notice stating that the Tender Exercise for that Qualifying Project has been cancelled.

Commencement of Tenders

- 5.40. As soon as reasonably practicable after:
- Ofgem has determined the Qualifying Projects (as specified in paragraphs 5.10 and 5.11);
 - the Developer has provided the appropriate payment and Security (as specified in paragraph 5.18 and 5.19); and
 - the Developer has satisfied those tender entry conditions required to be satisfied prior to the publication of the commencement notice.

Ofgem will publish a notice stating its intention to commence a Tender Exercise for the Qualifying Projects.

- 5.41. The notice will specify the Qualifying Projects included and the date on which the Tender Exercise will commence.
- 5.42. Ofgem may amend the commencement date of a Tender Exercise in respect of a particular Qualifying Project (to a date which may be earlier or later than that specified within the paragraph above) following consultation with the Developer.
- 5.43. Where Ofgem has considers it impracticable to commence a Tender Exercise on the date specified, it shall publish a further notice specifying a revised date for tender commencement.

Tender Commencement Notice

- 5.44. Ofgem is required to publish its Tender Commencement Notice on its website, in accordance with the 2010 Regulations. In addition, Ofgem may publish a voluntary notice in the Official Journal of the European Union, as well as notices in other relevant publications.

6. Pre-Qualification (PQ) Stage

Chapter Summary

This chapter sets out the key activities of the Pre-Qualification (PQ) Stage.

Introduction

- 6.1. PQ is the first stage of the Tender Exercise following tender commencement. The PQ stage involves a generic assessment of the suitability of any person who makes a PQ Submission based on its track record, rather than a specific assessment of its suitability as a potential OFTO for a particular Qualifying Project. At the end of this stage, Ofgem identifies a longlist of Qualifying Bidders to progress to the QTT Stage.
- 6.2. As at the date at which the PQ stage for Tranche B of the second transitional Tender Round (Tranche B) commenced, being 14 December 2012, the Tender Exercise was subject to the 2010 Regulations.
- 6.3. Even though this stage has now concluded for the second transitional Tender Round (Tranche B), for completeness this Section 6 describes the key activities associated with the PQ stage, based on the 2010 Regulations and as set out in the Tender Rules²² applicable at the time.

PQ Documentation Published

- 6.4. Ofgem will publish the PQ Documentation on the Portal and also on the Ofgem website.
- 6.5. The documentation will include:
 - the rules particular to the PQ Stage;
 - the stages of this Tender Exercise;
 - the timeline for the stage, including an overview of the key activities and steps;
 - the PQ Questionnaire;
 - the instructions that apply to the questionnaire (including an indication of the Qualifying Project(s) for which Bidders wish to be invited to tender), and the date, time and manner in which a completed questionnaire should be submitted to Ofgem;
 - other information available to any person or Bidder Group that makes a PQ Submission (see below);
 - the criteria against which Ofgem will evaluate each PQ Submission; and

²²<http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Tender%20Rules%20for%20the%20Second%20Transitional%20Tender%20Round.pdf>

- details of the payment as calculated in accordance with Ofgem's Cost Recovery Methodology and how and when to make payment for this stage.

Information Available to Bidders

Preliminary Information Memorandum (PIM)

- 6.6. A PIM for each Qualifying Project will be published on the Portal and on the Ofgem website. This will set out high level, project specific information provided by the Developer in respect of the relevant Qualifying Project. In addition, Ofgem will publish a generic PIM, which will provide background to the offshore transmission regime (including the regulatory framework) and other relevant information.

Clarifications

- 6.7. If a person or a Bidder Group that has made a PQ Submission requires clarification in relation to any aspect of the PQ Documentation, it may submit such clarification to Ofgem. For further information on Bidder clarifications, see paragraphs 4.17 to 4.19.

Bidder Payment

- 6.8. A PQ Submission will not be considered by Ofgem until it has received the required payment from the relevant person or Bidder Group that made the PQ Submission in cleared funds. This is a flat charge and is not dependent on the number of Qualifying Projects that such person or Bidder Group signals its interest in.
- 6.9. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in Section 2 of these Tender Rules.

PQ Submission

- 6.10. Persons or Bidder Groups that made a PQ Submission must make their completed PQ Submissions by the stated deadline, in accordance with the detailed instructions set out in the PQ Documentation. These instructions will include details of how and in what form PQ Submissions should be made.

Ofgem Clarifications of PQ Submissions

- 6.11. Ofgem may ask persons or Bidder Groups that made a PQ Submission to clarify their PQ Submissions. Such persons or Bidder Groups must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

Evaluation of PQ Submissions

- 6.12. Ofgem will evaluate each completed PQ Submission on a pass/fail basis in accordance with the evaluation criteria and process set out in the PQ

Documentation in order to determine the longlist of Qualifying Bidders that will be invited to participate in the QTT Stage.

- 6.13. Ofgem may decline to consider a PQ Submission made to it where Ofgem determines that the PQ Submission does not comply in any material respect with the requirements specified in the PQ Documentation.

Notification and Publication of Qualifying Bidder Longlist

- 6.14. Ofgem will notify each person or Bidder Group that made a PQ Submission (via the Portal) as to whether its PQ Submission has been successful or unsuccessful, and will give reasons for its determination.
- 6.15. The notices given to Qualifying Bidders set out the next steps they will need to take in order to participate in the QTT Stage.
- 6.16. Once all persons or Bidder Groups that made a PQ Submission has been notified, the longlist of Qualifying Bidders will be published on the Portal and on the Ofgem website.

Feedback

- 6.17. Ofgem expects to offer confidential feedback to any person or Bidder Group that made a PQ Submission following completion of the PQ Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 6.14.

7. Qualification to Tender (QTT) Stage

Chapter Summary

This chapter sets out the key activities of the Qualification to Tender (QTT) Stage.

Introduction

- 7.1. Following the coming into force of the 2013 Regulations on 22 February 2013, the 2013 Regulations apply in respect of the QTT Stage of the West of Duddon Sands project.
- 7.2. The purpose of the QTT Stage is to identify a suitable shortlist of Qualifying Bidders in respect of the West of Duddon Sands project to proceed to the ITT Stage. It is anticipated that the QTT Stage will take approximately three months to complete.
- 7.3. The paragraphs below summarise the key activities associated with this stage.

Enter Confidentiality Agreements

- 7.4. Ofgem will publish (via the Portal) a Confidentiality Agreement in respect of the West of Duddon Sands project, along with instructions that apply to that document, including the date, time and manner in which the Confidentiality Agreement should be submitted to Ofgem by a Qualifying Bidder. The Confidentiality Agreement will already have been signed by the Developer (as detailed within paragraph 5.29) and should not be amended.
- 7.5. Each Qualifying Bidder must submit a signed Confidentiality Agreement to Ofgem in respect of the West of Duddon Sands project. The return of the Confidentiality Agreement will enable Ofgem to release more detailed project-specific information to the Qualifying Bidder to assist completion of the QTT requirements.

QTT Documentation Published

- 7.6. Ofgem will issue the QTT Documentation to Qualifying Bidders (via the Portal) once Ofgem receives the signed Confidentiality Agreements referred to above and the Qualifying Bidder payments in cleared funds, if applicable.
- 7.7. The documentation will include:
 - the rules particular to the QTT Stage;
 - the timeline for the stage, including an overview of the key activities and steps;
 - the QTT Questionnaire;
 - the instructions that apply to the questionnaire, and the date, time and manner in which a completed questionnaire should be submitted to Ofgem;

- other information available to Qualifying Bidders (see below); and
- the criteria against which Ofgem will evaluate each QTT Submission.

Information Available to Qualifying Bidders

Information Memorandum (IM)

- 7.8. Each Qualifying Bidder that has entered into a Confidentiality Agreement will be granted access (on the Portal) to the IM in respect of the West of Duddon Sands project.

Project-Specific Transfer Agreements

- 7.9. In addition to the QTT Documentation, Ofgem intends to make available a project-specific Transfer Agreement, as provided by the Developer, provided Ofgem is satisfied that the project-specific Transfer Agreement is sufficiently advanced at that time²³ (see paragraph 4.26). These will only be made available to those Qualifying Bidders that have submitted signed Confidentiality Agreement(s) to Ofgem, as detailed within paragraph 7.4.
- 7.10. Qualifying Bidders will be notified within the QTT Documentation of what they are required to do in relation to this project-specific Transfer Agreement (if provided).

Qualifying Bidder Clarifications

- 7.11. If a Qualifying Bidder has a clarification in relation to any aspect of the QTT Documentation, it may submit such clarification to Ofgem. For further information on Qualifying Bidder clarifications, see paragraphs 4.17 to 4.19.

QTT Submission

- 7.12. Qualifying Bidders must make their completed QTT Submissions by the stated deadline, in accordance with the detailed instructions set out in the QTT Documentation. These instructions will include details of how and in what form QTT Submissions should be made. Any Qualifying Bidders who fail to submit a completed questionnaire shall be deemed to have withdrawn from this Tender Exercise.

Ofgem Clarifications of QTT Submissions

- 7.13. Ofgem may ask Qualifying Bidders to clarify their QTT Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

²³ If the project-specific Transfer Agreement is not sufficiently advanced at the QTT Stage, then it will be provided at the ITT Stage.

Evaluation of QTT Submissions

- 7.14. Ofgem will evaluate each completed QTT Submission in accordance with the evaluation criteria and process set out in the QTT Documentation in order to determine the shortlist of Qualifying Bidders in respect of the West of Duddon Sands project that will be invited to participate in the ITT Stage.
- 7.15. Ofgem may decline to consider a QTT Submission made to it where Ofgem determines that the Submission does not comply with the requirements specified in the QTT Documentation.

Notification to Qualifying Bidders and Publication of Qualifying Bidder Shortlist

- 7.16. Ofgem will notify each Qualifying Bidder (via the Portal) as to whether its QTT Submission has been successful or unsuccessful, and will give reasons for its determination.
- 7.17. The notices given to successful Qualifying Bidders will set out the next steps they will need to take in order to participate in the ITT Stage (including the amount payable to Ofgem in relation to the ITT Stage (see paragraph 8.4), as calculated in accordance with the Cost Recovery Methodology).
- 7.18. Once all Qualifying Bidders have been notified, the shortlist of Qualifying Bidders in respect of each Qualifying Project will be published on the Portal and on the Ofgem website. Ofgem may also make a general public announcement.

Qualifying Bidder Feedback

- 7.19. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the QTT Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 7.16.

8. Invitation to Tender (ITT) Stage

Chapter Summary

This chapter sets out the key activities of the Invitation to Tender (ITT) Stage.

Introduction

- 8.1. Following the coming into force of the 2013 Regulations on 22 February 2013, the 2013 Regulations apply in respect of the ITT Stage of the West of Duddon Sands project.
- 8.2. The purpose of the ITT Stage is to identify a Preferred Bidder (and possibly a Reserve Bidder) in respect of the West of Duddon Sands project. It is anticipated that the ITT Stage will take approximately six months to complete.
- 8.3. The paragraphs below summarise the key activities associated with this stage.

Qualifying Bidder Payment

- 8.4. Each Qualifying Bidder must, before the ITT Documentation is issued, make a payment to Ofgem in respect of the West of Duddon Sands project (this is the payment notified in paragraph 7.17).
- 8.5. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in Section 2 of these Tender Rules.

ITT Documentation Published

- 8.6. Ofgem will issue the ITT Documentation to a Qualifying Bidder (via the Portal) in respect of the West of Duddon Sands project.
- 8.7. The documentation will include:
 - the rules particular to the ITT Stage;
 - the timeline for the stage, including an overview of the key activities and steps;
 - a description of the information required by Ofgem for the making of an ITT Submission, and the date, time and manner in which this Submission should be made to Ofgem;
 - other information available to Qualifying Bidders (see below);
 - the criteria against which Ofgem will evaluate each ITT Submission; and
 - the criteria against which Ofgem will decide whether to hold a Best and Final Offer Stage (BAFO).

Information Available to Qualifying Bidders

Access to Data Room

- 8.8. On receipt of the ITT payment, Qualifying Bidders will be granted access to the Data Room relating to the West of Duddon Sands project. The Data Room will be accessed via the Portal.

Project-Specific Transfer Agreements

- 8.9. The project-specific Transfer Agreement, as provided by the Developer, will also be included in the Data Room. Qualifying Bidders will be notified within the ITT Documentation of what they are required to do with the project-specific Transfer Agreement.

Qualifying Bidder Clarifications

- 8.10. If a Qualifying Bidder has a clarification in relation to any aspect of the ITT Documentation, it may submit such clarification to Ofgem. For further information on Qualifying Bidder clarifications, see paragraphs 4.17 to 4.19.

ITT Submission

- 8.11. Qualifying Bidders will be invited to make an ITT Submission in respect of the West of Duddon Sands project only if they have been shortlisted.
- 8.12. Qualifying Bidders must make their completed ITT Submissions by the stated deadline, in accordance with the detailed instructions set out in the ITT Documentation. These instructions will include details of how and in what form ITT Submissions should be made.
- 8.13. If a Qualifying Bidder decides not to make an ITT Submission in respect of the West of Duddon Sands project, it must notify Ofgem in writing via the Portal as soon as reasonably possible after having made such decision.

Ofgem Clarifications of ITT Submissions

- 8.14. Ofgem may ask Qualifying Bidders to clarify their ITT Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

Evaluation of ITT Submissions

- 8.15. Ofgem will evaluate each completed ITT Submission in accordance with the evaluation criteria and process set out in the ITT Documentation in order to determine which Qualifying Bidder shall become the Preferred Bidder in respect of the West of Duddon Sands project.
- 8.16. As a result of this evaluation, Ofgem may also determine which Qualifying Bidder shall become the Reserve Bidder in respect of the West of Duddon Sands project.

- 8.17. In accordance with the Tender Regulations, Ofgem may or may not decide to run a BAFO Stage. Where Ofgem does not hold a BAFO Stage, the decision to select a Preferred Bidder will be made on the basis of the criteria published in the ITT Documentation.
- 8.18. Ofgem may decline to consider an ITT Submission made to it where Ofgem determines that the Submission does not comply with the requirements specified in the ITT Documentation.

Notification to Qualifying Bidders

- 8.19. Ofgem will notify each Qualifying Bidder as to whether it is the Preferred Bidder (or the Reserve Bidder, if applicable) in respect of the West of Duddon Sands project, or whether its ITT Submission has been unsuccessful, and will give reasons for its determination.
- 8.20. Ofgem will also publish the name of the Preferred Bidder in respect of the West of Duddon Sands project and may also publish the name of the Reserve Bidder (if applicable).

Notification of a BAFO Stage

- 8.21. If applicable, Ofgem will notify each shortlisted Qualifying Bidder as to whether they have or have not been invited to participate in a BAFO Stage in respect of the West of Duddon Sands project.

Qualifying Bidder Feedback

- 8.22. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the ITT Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 8.19.

9. Best and Final Offer (BAFO) Stage

Chapter Summary

This chapter sets out the key activities of the Best and Final Offer (BAFO) Stage.

Introduction

- 9.1. In accordance with the criteria set out in the ITT Documentation, Ofgem will decide whether or not to undertake a BAFO Stage for the West of Duddon Sands project, in accordance with the 2013 Regulations.
- 9.2. The purpose of the optional BAFO Stage is to determine a Preferred Bidder (and possibly a Reserve Bidder) in respect of the West of Duddon Sands project at the end of the ITT Stage. It is anticipated that, where it is required, the BAFO Stage will take approximately two months to complete.
- 9.3. The paragraphs below summarise the key activities associated with this stage.

BAFO Documentation Published

- 9.4. Ofgem will issue the BAFO Documentation to a Qualifying Bidder (via the Portal) for the West of Duddon Sands project.
- 9.5. The documentation will include:
 - the rules particular to the BAFO Stage;
 - the timeline for the stage, including an overview of the key activities and steps;
 - a description of the information required by Ofgem for the making of a BAFO Submission, and the date, time and manner in which this Submission should be submitted to Ofgem; and
 - the criteria against which Ofgem will evaluate each BAFO Submission.

Qualifying Bidder Clarifications

- 9.6. If a Qualifying Bidder has a clarification in relation to any aspect of the BAFO Documentation, it may submit such clarification to Ofgem. For further information on Qualifying Bidder clarifications, see paragraphs 4.17 to 4.19.

Qualifying Bidder Payment

- 9.7. Qualifying Bidders are not required to make any payments to Ofgem at the BAFO Stage.

BAFO Submission

- 9.8. Qualifying Bidders must make their BAFO Submissions by the stated deadline, in accordance with the detailed instructions set out in the BAFO Documentation. These instructions will include details of how and in what form BAFO Submissions should be made.
- 9.9. If a Qualifying Bidder decides not to make a BAFO Submission in respect of the West of Duddon Sands project, it must notify Ofgem in writing via the Portal as soon as reasonably possible after having made such decision.

Ofgem Clarifications of BAFO Submissions

- 9.10. Ofgem may ask Qualifying Bidders to clarify their BAFO Submissions. Qualifying Bidders must respond within the timescale specified in the clarification request. For further information on Ofgem clarifications, see paragraph 4.20.

Evaluation of BAFO Submissions

- 9.11. Ofgem will evaluate each completed BAFO Submission in accordance with the evaluation criteria and process set out in the BAFO Documentation in order to determine which Qualifying Bidder shall become the Preferred Bidder in respect of the West of Duddon Sands project.
- 9.12. As a result of this evaluation, Ofgem may also determine which Qualifying Bidder shall become the Reserve Bidder in respect of the West of Duddon Sands project.
- 9.13. Ofgem may decline to consider a BAFO Submission made to it where Ofgem determines that the Submission does not comply with the requirements specified in the BAFO Documentation.

Notification to Qualifying Bidders

- 9.14. Ofgem will notify each Qualifying Bidder as to whether it is the Preferred Bidder (or the Reserve Bidder, if applicable) in respect of the West of Duddon Sands project, or whether its BAFO Submission has been unsuccessful, and will give reasons for its determination.
- 9.15. Ofgem will also publish the name of the Preferred Bidder in respect of the West of Duddon Sands project, and may also publish the name of the Reserve Bidder (if applicable).

Qualifying Bidder Feedback

- 9.16. Ofgem expects to offer confidential feedback to any Qualifying Bidder following completion of the BAFO Stage. Ofgem expects that any such feedback will be provided within one month of the notification referenced within paragraph 9.14.

10. Preferred Bidder (PB) Stage

Chapter Summary

This chapter sets out the key activities of the Preferred Bidder (PB) Stage.

Introduction

- 10.1. Following the coming into force of the 2013 Regulations on 22 February 2013, the 2013 Regulations apply in respect of the Preferred Bidder Stage of the West of Duddon Sands project.
- 10.2. The purpose of the Preferred Bidder Stage is to resolve certain matters to the Authority's satisfaction before that Preferred Bidder becomes the Successful Bidder in respect of the West of Duddon Sands project.
- 10.3. Preferred Bidders will be provided with the contact details of the Developer in respect of the West of Duddon Sands project at this stage so that both parties may engage in order to finalise all relevant documentation.
- 10.4. Ofgem's key role during this stage is to determine the Tender Revenue Stream to be incorporated in the Offshore Transmission Licence in respect of the West of Duddon Sands project. Ofgem expects that most of the issues arising during this stage will be for resolution on a commercial basis between the Preferred Bidder, the Developer and any other relevant parties. Ofgem does not propose to review or participate in the development of documents to which it is not a party, or to act as an arbiter of disputes between the parties.
- 10.5. The paragraphs below summarise the key activities associated with this stage.

Public Notice

- 10.6. At the start of the Preferred Bidder Stage, Ofgem will publish a public notice for each relevant Qualifying Project:
 - confirming the name and address of the Preferred Bidder; and
 - describing, in general terms, the matters to be resolved by the Preferred Bidder (to Ofgem's satisfaction) before that Preferred Bidder becomes the Successful Bidder. These shall include that the Preferred Bidder has:
 - (i) established the necessary arrangements to provide offshore Transmission Services for the Qualifying Project, including having all relevant contractual, funding, regulatory and operational arrangements ready for the transfer of the Transmission Assets and the grant of the Offshore Transmission Licence;
 - (ii) put in place a bilateral Transmission Owner Construction Agreement with NETSO;
 - (iii) acceded to the System Operator – Transmission Owner Code; and

- (iv) resolved any other matters which Ofgem determines are necessary in relation to the Qualifying Project.

Notification to Preferred Bidders

10.7. Ofgem will separately notify each Preferred Bidder of:

- a) the name of the Reserve Bidder (if applicable);
- b) a draft of the matters they will need to resolve (to the Authority's satisfaction) before becoming the Successful Bidder (the draft 'Preferred Bidder Matters'), to include the matters referenced within paragraph 10.6; and
- c) details of the process and indicative timelines to asset transfer, financial close, the process for finalising the Tender Revenue Stream and the grant of the Offshore Transmission Licence.

10.8. Ofgem may notify the Preferred Bidder at this point of the details of any on-hold period, where it applies, for the Qualifying Project for which they are Preferred Bidder - see paragraphs 10.13 to 10.15.

10.9. Preferred Bidders will be provided with an opportunity to discuss the draft Preferred Bidder Matters with Ofgem and to also provide written comments. Ofgem will consider any comments received in determining the Preferred Bidder Matters and may amend the draft Preferred Bidder Matters where it is satisfied that it is appropriate to do so.

PB Matters Notification

10.10. As soon as reasonably practicable following completion of the activity set out within paragraph 10.9 Ofgem will provide the Preferred Bidder with a notice under Regulation 20(5) of the 2013 Regulations setting out:

- the final Preferred Bidder Matters;
- how, and by when, the Preferred Bidder Matters should be resolved; and
- the amount payable to Ofgem in relation to the Preferred Bidder Stage, as calculated in accordance with the Cost Recovery Methodology – see paragraph 10.11.

Preferred Bidder Payment

10.11. The Preferred Bidder must make a payment to Ofgem in respect of the West of Duddon Sands project.

10.12. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in Section 2 of these Tender Rules.

On-Hold Period

- 10.13. Where there is a significant time period from appointment of Preferred Bidder until the completion of construction of Transmission Assets for the West of Duddon Sands project, Ofgem may decide to apply an 'on-hold' period for the West of Duddon Sands project until a point at which the Transmission Assets are closer to being completed and ready for transfer. This on-hold period would occur following the issue of the notice referred to in paragraph 10.10 and the Preferred Bidder making the payment referred to in paragraph 10.11.
- 10.14. If it decides to apply an on-hold period for the West of Duddon Sands project, Ofgem will notify the Preferred Bidder and the Developer. This notification will include details of the expected duration of the on-hold period. The duration of the on-hold period will be defined with reference to the estimated asset transfer date for the West of Duddon Sands project and the time required to go through the remaining steps prior to asset transfer.
- 10.15. Ofgem will notify the Preferred Bidder and the Developer of the date on which the on-hold period ends. Following the end of the on-hold period, the process will continue as described from paragraph 10.16 onwards.

Information Available to Preferred Bidders

Information in Relation to Tender Process and Offshore Transmission Licence

- 10.16. Ofgem will continue to provide information in relation to the tender process via the Portal, including any updated versions of the Offshore Transmission Licence²⁴, any further guidance notes and any information in connection with the Preferred Bidder Stage, the assessment of costs and the transfer value of the West of Duddon Sands project.

Access to the Developer's Data Room

- 10.17. To assist in performing their confirmatory due diligence, the Preferred Bidders will be granted access to the Data Room which is maintained and updated by the Developer in respect of the West of Duddon Sands project. This will allow a direct flow of information to be provided by the Developer to the Preferred Bidder. The Data Room will be accessible via the Portal.
- 10.18. Ofgem will take no responsibility for the content of documents in the Developer Data Room and will not review or comment upon documents in the Developer Data Room, other than as required in connection with Ofgem's assessment of costs and determination of the Final Transfer Value.

²⁴ Transmission Licence Standard Conditions (as at 06/04/2012):

<http://epr.ofgem.gov.uk/EPRFiles/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

Generic Offshore Transmission Owner Licence (version 1.4):

<http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/Generic%20OFTO%20Licence%20V1.4.pdf>

Guidance on the Offshore Transmission Owner Licence for the Transitional Tender Round 2:

http://www.ofgem.gov.uk/Networks/offtrans/rttt/Documents1/OFTO_Licence_V1.4_Guidance.pdf

Section 8A Licence Consultation

- 10.19. Once Ofgem has received certain confirmations from the Preferred Bidder required under the Preferred Bidder Matters, and once Ofgem has determined the final Tender Revenue Stream for the West of Duddon Sands project, it intends to commence a Section 8A Licence Consultation process for the West of Duddon Sands project.
- 10.20. Ofgem will issue a public notice, in accordance with Section 8A of the Electricity Act, to propose a modification to the standard conditions of the Offshore Transmission Licence in order to incorporate the OFTO-specific provisions²⁵ in the Offshore Transmission Licence at the time of Offshore Transmission Licence grant. This notice is subject to a statutory public 28 day consultation period.

Notification to Preferred Bidders

- 10.21. Following the Section 8A Licence Consultation process and once Ofgem is satisfied that the Preferred Bidder has resolved all the Preferred Bidder Matters, then the Preferred Bidder shall become the Successful Bidder for the West of Duddon Sands project, and Ofgem will notify the Successful Bidder accordingly.
- 10.22. Where Ofgem is not satisfied that the Preferred Bidder has resolved the Preferred Bidder Matters, or where the Preferred Bidder fails to make the payment specified within paragraph 10.11, or withdraws from the Tender Exercise or is disqualified, it may publish a notice discontinuing the Tender Exercise with the Preferred Bidder and may determine to treat the Reserve Bidder (if it has determined one) as if it were the Preferred Bidder for that particular Qualifying Project – see below. Alternatively, Ofgem may re-run the Tender Exercise for the West of Duddon Sands project from the beginning or from a particular stage from the beginning or from a particular stage in accordance with Regulation 22 of the 2013 Regulations.

Next Steps in the Event that the Preferred Bidder Does Not Become the Successful Bidder

- 10.23. Where paragraph 10.22 applies, Ofgem will notify the Reserve Bidder that it has become the Preferred Bidder. The Preferred Bidder Stage will then start again with the new Preferred Bidder, in line with the rules and activities set out from paragraph 10.6 onwards.
- 10.24. Where Ofgem has not determined a Reserve Bidder, then Ofgem will cancel or re-run the Tender Exercise for the West of Duddon Sands project from either a particular stage or from the beginning of the Tender Exercise, if either:
- a) the Preferred Bidder does not satisfy Ofgem that it has resolved the Preferred Bidder Matters; or
 - b) the Preferred Bidder withdraws, or is disqualified from a Tender Exercise.

²⁵ In the Offshore Transmission Licence, these are Amended Standard Conditions E12-A1 to E12-J11

Particular Obligations of the Developer from the Preferred Bidder Stage

10.25. In order to facilitate Ofgem's determination of the Successful Bidder, the Developer shall from the date specified use its reasonable endeavours to:

- enable the Preferred Bidder to resolve the PB Matters to the extent that the resolution of those matters depends on the actions of the Developer; and
- enable the Transmission Assets to be transferred to the Successful Bidder.

Failure by the Developer to comply with these obligations is an event of disqualification in accordance with the Tender Regulations.

11. Successful Bidder (SB) Stage

Chapter Summary

This chapter sets out the key activities of the Successful Bidder (SB) Stage.

Introduction

- 11.1. Following the coming into force of the 2013 Regulations on 22 February 2013, the 2013 Regulations apply in respect of the Successful Bidder Stage of the West of Duddon Sands project.
- 11.2. The purpose of the Successful Bidder Stage is for the Authority to grant an Offshore Transmission Licence to the Successful Bidder so that they become the OFTO for the West of Duddon Sands project.
- 11.3. The paragraphs below summarise the key activities associated with this stage.

Notification to Successful Bidders

- 11.4. As soon as possible after Ofgem has notified the Preferred Bidder that they have become the Successful Bidder (as referred to in paragraph 10.21), it shall publish a notice that:
 - confirms its determination to grant an Offshore Transmission Licence to the Successful Bidder; and
 - specifies the name and address of the Successful Bidder.
- 11.5. Ofgem will also notify the Successful Bidder as to the amount payable to Ofgem in relation to the Successful Bidder Stage and by when the payment should be made – see paragraph 11.10.

Notification to each Qualifying Bidder

- 11.6. At the same time as notifying the Successful Bidder, Ofgem will notify each Qualifying Bidder in respect of the West of Duddon Sands project of its determination to grant an Offshore Transmission Licence to the Successful Bidder. This notice will include:
 - confirmation of the criteria used by Ofgem to evaluate ITT Submissions during the ITT Stage;
 - the reasons for Ofgem's determination, including the characteristics and relative advantages of the successful tender;
 - the result obtained by that Qualifying Bidder and by the Successful Bidder;
 - the name of the Successful Bidder; and
 - the date when the standstill period (referred to below) is expected to end.

- 11.7. Note that Ofgem may withhold any information to be provided in accordance with paragraph 11.6 where the disclosure of such information would be contrary to law or public interest, or would prejudice fair competition between Qualifying Bidders.

Standstill Period

- 11.8. Where Ofgem notifies Qualifying Bidders as described in paragraph 11.6, a standstill period will apply in respect of the West of Duddon Sands project.
- 11.9. The standstill period will not end before midnight at the end of the tenth working day after the date on which the notification described in paragraph 11.6 is given to Qualifying Bidders.

Successful Bidder Payment

- 11.10. The Successful Bidder in respect of the West of Duddon Sands project must make a payment to Ofgem.
- 11.11. Details of required payments, including instructions for how to make payments, can be found in the Cost Recovery Methodology. Details of the consequences of not making payment to the timelines specified by Ofgem are detailed in Section 2 of these Tender Rules.

Notice of Determination to Grant an Offshore Transmission Licence

- 11.12. As soon as reasonably practicable after the end of the standstill period Ofgem will confirm its determination whether or not to grant an Offshore Transmission Licence to the Successful Bidder in respect of the West of Duddon Sands project and shall publish a notice to that effect and give notice to the Reserve Bidder that it is being stood down.
- 11.13. Ofgem will also publish various directions under the conditions of the Offshore Transmission Licence. Each direction will be accompanied by a Section 49A Notice of reasons.
- 11.14. Where Ofgem publishes the notice referred to in paragraph 11.12, then the Tender Exercise is finished in respect of the West of Duddon Sands project.

Financial Close and Asset Transfer

- 11.15. The Successful Bidder should undertake all relevant process to close activities (e.g. execute all final form documents, draw down funds, etc.) in order to allow for the simultaneous (where practicable) financial close, asset transfer and grant of the Offshore Transmission Licence for the Transmission Assets for the West of Duddon Sands project.

Appendix 1 – Disclaimer and Notices

Non-reliance, Accuracy of Information and Exclusion of Liability

- 1.1. It is the responsibility of the Developer to ensure that it has all of the information it needs to satisfy the Qualifying Project requirements and tender entry conditions and the responsibility of each Bidder to ensure that it has all of the information it needs to prepare its Submissions.
- 1.2. While information provided by Ofgem and/or its Advisers in these Tender Rules or otherwise in relation to the Tender Round has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. Neither Ofgem nor any of its Advisers make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information provided by it or its Advisers in these Tender Rules or otherwise in relation to the Tender Round or any information provided by the Developer through the Data Room or otherwise. Ofgem and its Advisers expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, the information or based on or relating to its use by a Bidder, a Developer and/or any other interested party.

Use of Information

- 1.3. These Tender Rules are not intended to provide the basis of any investment decision, nor are they intended to be considered as an investment recommendation by Ofgem or by any of its Advisers. Each Bidder, the Developer and any other interested party must make its own independent assessment of the Qualifying Project after making such investigation and taking such professional advice as it deems necessary.
- 1.4. The material in the Tender Rules is not and should not be regarded as legal or professional advice. Bidders, the Developer and other interested parties should seek their own legal or other professional advice where appropriate.
- 1.5. Nothing in the Tender Rules is intended to, or shall be deemed to establish any partnership or joint venture between Ofgem and any Bidder or the Developer.
- 1.6. Advisers acting for Ofgem in relation to the Tender Round will not regard the Developer or any Bidder or other interested party as their client or be responsible to anyone other than Ofgem for providing the protections afforded to their clients or for advising any other person on the Tender Round or any matter related to it.

Freedom of Information

- 1.7. The Freedom of Information Act 2000 provides a general right of access to all information held by public authorities. The Environmental Information Regulations 2004 provide a general right of access to all environmental information held by public authorities. Ofgem is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Developer should identify which parts, if any, of the information which they provide to Ofgem, either before or during the Tender Round, are provided in confidence and provide reasons why they consider the information is eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Bidders should identify which parts, if any, of their Submissions are provided to Ofgem in confidence and provide reasons why they consider the information is eligible for exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and should be kept confidential. Ofgem will take any such statement of confidentiality into account in considering whether an exemption applies, but Ofgem is not bound by any such statement.
- 1.8. Although Ofgem is not under any statutory obligation to consult with a Bidder or the Developer in relation to requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, Ofgem will endeavour to inform the relevant Bidder or the Developer of requests wherever it is reasonably practicable to do so. However, all decisions in respect of disclosure of information will be made at the sole discretion of Ofgem regardless of whether or not a Bidder or the Developer has identified any information as being in its opinion eligible for exemption. For further information and guidance, Bidders' and the Developer's attention is drawn to the Lord Chancellor's Code of Practice issued under Section 45 of the Freedom of Information Act 2000²⁶.

Data Protection

- 1.9. In participating in the Tender Round, the Developer and Bidders must comply with the Data Protection Act 1998 and all relevant regulations, together with any codes of conduct and guidance issued by the Information Commissioner and must not do or cause or permit to be done anything which may cause or otherwise result in a breach by Ofgem of such requirements. BravoSolution UK Ltd, on behalf of Ofgem, will collect, hold and use personal data obtained from and about Developers and Bidders. In order to participate in the Tender Round, the Developer and Bidders must agree to such data being collected, held and used.

²⁶see <http://www.dca.gov.uk/foi/codesprac.htm>

Copyright

- 1.10. The information contained within these Tender Rules is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or medium provided it is reproduced accurately and not in a misleading or derogatory manner. Where any of the Crown copyright material in these Tender Rules is being published or copied to others, the source of the material must be identified and the copyright status acknowledged.

Appendix 2 – The Portal

Portal User Agreement and ID/Password

Developers

- 1.1. Ofgem will create a log-on for the Developer on the Portal homepage so that they are able to upload information in relation to their Qualifying Project. Each Developer must agree to the terms of the Portal User Agreement before the commencement of a Tender Exercise.
- 1.2. Following acceptance of the terms of the User Agreement, Developers will be issued with a user ID. Each Developer is required to appoint a named individual to act as a point of contact to be issued with the user ID and password (if the Developer subsequently wishes to create additional User(s), they must request authorisation from Ofgem via this point of contact). This user ID and password can only be used by the Developer to access the Developer view of the Data Room for their Qualifying Project. It cannot be used to access the Bidder view of the Portal. Where a Developer wishes to participate in the Tender Round as a Bidder, it must register separately as a Bidder.

Bidders and Other Interested Parties

- 1.3. In order to access more detailed information about tenders or to participate in the Tender Round, Bidders or other interested parties will first need to create a log-on by clicking the 'Register here' link on the Portal homepage: <https://ofgem.bravosolution.co.uk/web/login.shtml>. Each Bidder and interested party must agree to the terms of the User Agreement in order to access any information provided through the Portal.
- 1.4. Following acceptance of the terms of the User Agreement, Bidders or other interested parties must register any and each of their proposed User Agents by providing the required registration data and specifying a user ID for each of them in accordance with the requirements as specified on the Portal. Each User Agent will then be provided with an initial password, which it will be required to change. Once this process has been completed, the User Agent will be able to access the relevant sections of the Portal.
- 1.5. Each Bidder or other interested party must designate a User Agent to manage access to the Portal by that Bidder's or interested party's other Users (if applicable).

Data Room Uploading and Updating

- 1.6. Each Developer is required to upload on to the Portal, in accordance with the Data Room Guidelines, the relevant documents for the Data Room for its Qualifying Project. Ofgem will then confirm the content against the Data Room Guidelines and transfer the documents into the relevant Data Room on the Portal for Qualifying Bidders to view. The Data Room in respect of each Qualifying Project will be made available to relevant Qualifying Bidders at the ITT Stage.
- 1.7. In accordance with the Tender Regulations, a Developer (having regard to the instructions in the Data Room Guidelines) is required to update the Data Room where there has been any change to the information previously provided or where new information is available and relevant. Developers must notify Ofgem via email whenever they update the Data Room. Qualifying Bidders will be automatically notified if any updates are made to information on the Portal.

Security requirements

- 1.8. The BravoSolution system is compliant with Office of Government Commerce standards.
- 1.9. A Developer, Bidder or other interested party must immediately inform the Helpdesk in the event that any registered Portal User or User Agent ceases to be a representative of the Developer, Bidder or other interested party or no longer requires access to the Portal for the purpose of the Tender Round.
- 1.10. User IDs and passwords are strictly personal to the Portal User to which they are given and non-transferable (including to other Portal Users of the same Developer or Bidder). Each Developer and Bidder must ensure that its User Agent(s) do not divulge or disclose their user ID or password to third parties (including to other Portal Users of the same Developer or Bidder). In the event that a Developer or Bidder or a User becomes aware that a user ID and/or password may have been divulged, disclosed or discovered by any third party, they must immediately notify the Helpdesk.
- 1.11. Any Submission by a Bidder using the user ID and password of any of its User Agents will be deemed to be a valid Submission and will be binding on that Bidder. A Bidder will be responsible for any unauthorised, false or fraudulent Submission that is submitted using the user ID and password of one of its User Agents.
- 1.12. Developers, Bidders and interested parties and their User Agents will not be able to view or find out the identity of other Developers, Bidders or interested parties or their User Agents on, or through the use of, the Portal.

Portal Information and Helpdesk

- 1.13. A workshop for Bidders and other interested parties may be held on request to provide an overview of how the Portal works.
- 1.14. Help guides are available on the Portal that provide further information about how to use the Portal in relation to the Tender Round. These will be updated where appropriate.
- 1.15. BravoSolution UK Ltd will provide a Helpdesk facility to handle technical support in respect of queries raised by users of the Portal. Helpdesk are instructed only to supervise and maintain the operation of the Portal and Users are not permitted to ask any questions of Helpdesk in relation to the Tender Round or in respect of information available through the Portal.
- 1.16. The Portal Helpdesk will be open between 8am and 6pm (Monday to Friday, excluding public holidays in England) and can be contacted as follows:

Telephone: + 44 (0)800 011 2470

Fax: +44 (0)20 7060 0480

Email: help@bravosolution.co.uk

Appendix 3 – Glossary

'Advisers' means in relation to Ofgem, its employees, officers, directors, officials, insurers, agents, consultants, advisers, contractors, subcontractors (of any tier) and affiliates.

'Authority' means the Gas and Electricity Markets Authority²⁷.

'BAFO' means the best and final offer that may be requested by Ofgem from some or all of the Qualifying Bidders.

'BAFO Documentation' means, in respect of a particular Qualifying Project, the documentation which will be delivered to each Qualifying Bidder invited to make a BAFO Submission, which sets out the rules and requirements of the BAFO Stage.

'BAFO Stage' means the period starting from the distribution by Ofgem of the BAFO Documentation to selected Qualifying Bidders, including BAFO preparation, Submission and evaluation, and ending when a Preferred Bidder is selected and notified.

'BAFO Submission' means a selected Qualifying Bidder's response to the BAFO Documentation.

'Bidder' means any person or Bidder Group that makes a PQ Submission, a Qualifying Bidder, a Preferred Bidder, a Reserve Bidder or a Successful Bidder (as applicable).

'Bidder Group' means two or more persons acting together as a consortium for the purposes of any Submission to Ofgem in accordance with the Tender Regulations.

'Competition Act' means the Competition Act 1998 as amended from time to time.

'Confidentiality Agreement' means the standard form agreement between a Developer and a Qualifying Bidder in respect of confidential information disclosed in connection with a Tender Exercise.

'Confidentiality Consent' means a consent that the Developer signs consenting to Ofgem using information provided to it in respect of the Tender Exercise.

'Cost Recovery Methodology' means the Cost Recovery Methodology for recovering Ofgem's tender costs relating to the second transitional Tender Round, published separately by Ofgem.

'Crown Estate' means the body responsible for awarding offshore wind leases for access to the seabed to wind farm operators. Each OFTO must enter into a lease or

²⁷ The terms 'Ofgem' and 'the Authority' are used interchangeably in these Tender Rules

licence with the Crown Estate to be able to operate and maintain its Offshore Transmission System on the seabed.

'Data Room' means, in respect of a Qualifying Project, a secure electronic data room populated and maintained by Ofgem with information provided by the relevant Developer, which is made available to relevant Qualifying Bidders through the Portal.

'Data Room Guidelines' means the document published by Ofgem to assist Developers to provide information to Ofgem to enable the population of the Data Room.

'DECC' means the government department responsible, among other things, for the introduction of the regulatory regime for offshore electricity transmission. It has responsibility for commencing the relevant sections of primary legislation and approves new and amended tender regulations.

'Developer' means the person falling within sub-sections 6D(2)(a) and (4) of the Electricity Act, that has developed or is developing an offshore generating station who requests that Ofgem commences a Tender Exercise in respect of a proposed project.

'Distribution Network Owner' or 'DNO' means a body which operates an electricity distribution network which includes all parts of the network from 132kV down to 230V in England and Wales. In Scotland 132kV is considered to be a part of transmission rather than distribution so their operation is not included in the DNOs' activities.

'Electricity Act' means the Electricity Act 1989 as amended from time to time.

'Estimated transfer value' means Ofgem's estimate of the efficient and economic costs which ought to be incurred in connection with the development and construction of the transmission assets for each Qualifying Project.

'Final Transfer Value' means Ofgem's assessment of the efficient and economic costs which ought to have been incurred in connection with the development and construction of the Transmission Assets for each Qualifying Project.

'Government' means Her Majesty's Government in the United Kingdom.

'Helpdesk' means the facility provided by BravoSolution UK Ltd to handle technical support queries raised by Users of the Portal.

'Indicative Transfer Value' means Ofgem's estimate of the economic and efficient costs which ought to be incurred in connection with the development and construction of the relevant Transmission Assets.

'Initial Transfer Value' means the initial transfer value for a Qualifying Project based on information provided by the Developer.

'Information Commissioner' has the meaning given to that term in the Data Protection Act 1998 as amended from time to time.

‘Information Memorandum’ or ‘IM’ means the document issued by Ofgem to a Qualifying Bidder at the QTT stage containing detailed information in relation to a Qualifying Project.

‘ITT’ means Invitation to Tender under Regulation 17 of the 2013 Regulations.

‘ITT Documentation’ means, in respect of a particular Qualifying Project, the documentation, which will be made available to each Qualifying Bidder invited to make an ITT Submission for that Qualifying Project and which sets out the rules and requirements of the ITT Stage.

‘ITT Stage’ means the period starting from the distribution of the ITT Documentation to Qualifying Bidders by Ofgem, and including the preparation, Submission and evaluation of ITT Submissions, and ending when either a Preferred Bidder is selected and notified, or a BAFO Stage is commenced.

‘ITT Submission’ means a Submission by a Qualifying Bidder to Ofgem in response to the ITT Documentation.

‘Licence grant’ means the grant of the Offshore Transmission Licence by the Authority to the Successful Bidder, pursuant to section 6C of the Electricity Act.

‘NETSO’ means the National Electricity Transmission System Operator (formally known as the GB System Operator). This role is fulfilled by NGET in accordance with its Electricity Transmission Licence. Under its standard licence conditions, NGET is required to provide Ofgem with certain information and assistance in relation to any Tender Exercise and the Offshore Electricity Transmission System to which it relates.

‘NGET’ means National Grid Electricity Transmission PLC.

‘Offshore Transmission Licence’ means an Offshore Transmission Licence granted pursuant to section 6(1)(b) of the Electricity Act in relation to the transmission of electricity in offshore waters, where offshore waters means:

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea;
- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964; and
- (c) waters within an area designated under section 84(4) of the Energy Act 2004.

‘Offshore Transmission System’ means the onshore and offshore transmission system in respect of which an Offshore Transmission Licence is (or is to be) granted or anything which forms part of that system.

‘Ofgem’ means the Office of Gas and Electricity Markets.²⁸

‘OFTO’ or ‘Offshore Transmission Licensee’ means the holder of an Offshore Transmission Licence.

²⁸ The terms ‘Ofgem’ and ‘the Authority’ are used interchangeably in these Tender Rules

'Portal' means the Offshore Transmission Electronic Tendering Portal described in section 4 and Appendix 2 of these Tender Rules.

'Post Tender Revenue Adjustment mechanism' means the mechanism used by the Authority to determine any adjustments to the revenue stream that may be required as a result of the difference between the Authority's estimated transfer value and the final transfer value.

'Preferred Bidder' means, in relation to a Qualifying Project, the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the submissions received, as the Qualifying Bidder to which it intends (subject to the satisfaction of the conditions specified by Ofgem) to grant the Offshore Transmission Licence.

'Preferred Bidder Matters' has the meaning stated in paragraph 10.6b).

'Preferred Bidder Stage' means the period starting at the date of Ofgem's notice to a Qualifying Bidder that it has been selected as Preferred Bidder and ending at the date of Ofgem's notice to the Preferred Bidder that it has become the Successful Bidder.

'Preliminary Information Memorandum' or 'PIM' means the document issued by Ofgem via the Portal at the PQ stage containing high level information in relation to a Qualifying Project.

'PQ Documentation' means the documentation prepared and issued by Ofgem for the purpose of selecting a longlist of Qualifying Bidders to progress to the QTT Stage and which sets out the rules and requirements of the PQ Stage.

'PQ Questionnaire' means the PQ Questionnaire published by Ofgem at the PQ Stage, as part of the PQ Documentation, to entities that have registered on the Portal.

'PQ Stage' means the period starting from the publication of the PQ Documentation, including the preparation, Submission and evaluation of PQ Submissions and ending once Ofgem has published the longlist of Qualifying Bidders who are invited to participate in the QTT Stage.

'PQ Submission' means a Bidder's response to the PQ Documentation.

'Qualifying Bidder' means a Bidder or Bidder Group invited to make a QTT Submission or an ITT Submission, or if applicable, a BAFO Submission.

'Qualifying Project' means an offshore generating project in respect of which Ofgem determines that the Developer has satisfied the Qualifying Project requirements described in paragraph 2 of Schedule 1 to the Tender Regulations or which Ofgem determines at its discretion (exercised in accordance with the Tender Regulations) that the Developer will use its reasonable endeavours to satisfy the relevant Qualifying Project requirements within a period specified by Ofgem.

'QTT' means Qualification to Tender.

'QTT Documentation' means the documentation prepared and issued by Ofgem for the purpose of selecting Qualifying Bidders to progress to the ITT Stage and which sets out the rules and requirements of the QTT Stage.

'QTT Questionnaire' means the QTT Questionnaire published by Ofgem at the QTT Stage, as part of the QTT Documentation, to entities that have registered on the Portal.

'QTT Stage' means the period starting from the distribution of the QTT Documentation to Qualifying Bidders to Ofgem, including the preparation, Submission and evaluation of QTT Submissions and ending once Ofgem has published the shortlist of Qualifying Bidders for Qualifying Projects who are invited to participate in the ITT Stage.

'QTT Submission' means a Qualifying Bidder's response to the QTT Documentation.

'Reserve Bidder' means the Qualifying Bidder determined by Ofgem, in its sole discretion and following its evaluation of the Bids received, as the second choice Qualifying Bidder to which Ofgem would consider granting the Offshore Transmission Licence should Ofgem determine not to grant the Offshore Transmission Licence to the Preferred Bidder.

'Section 8A Licence Consultation' has the meaning **stated in paragraph 10.19.**

'Section 49A Notice' means a notice given by the Authority under Section 49A of the Electricity Act.

'Security' includes a charge over a bank account or any other asset, a deposit of money, a performance bond or bank guarantee, an insurance policy or a letter of credit.

'Submission(s)' means a PQ Submission, a QTT Submission, an ITT Submission or a BAFO Submission (if applicable).

'Successful Bidder' means a Preferred Bidder to which Ofgem has determined to grant an Offshore Transmission Licence.

'Successful Bidder Stage' means the period starting at the date of Ofgem's notice to a Preferred Bidder that it has become the Successful Bidder and ending at the date when the Successful Bidder is granted an Offshore Transmission Licence in relation to a particular Qualifying Project.

'Tender Commencement Notice' means the notice issued by the Authority under Regulation 9(1) of the 2010 Regulations confirming its intention to commence a Tender Exercise.

'Tender Exercise' means the competitive process run by Ofgem in order to identify a Successful Bidder to be granted an Offshore Transmission Licence in relation to a particular Qualifying Project.

'Tender Regulations' means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 or means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 (as applicable) in accordance with Regulation 2 of the 2013 Regulations.

'2010 Regulations' means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010.

'2013 Regulations' means the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013.

'Tender Revenue Stream' means a constant revenue stream in real terms submitted by the Qualifying Bidder for the relevant Qualifying Project.

'Tender Round' means the Tender Exercises run by Ofgem in order to identify Successful Bidders to be granted Offshore Transmission Licences in relation to Qualifying Projects.

'Tender Rules' means these rules published by Ofgem pursuant to Regulation 11(4) of the 2013 Regulations (as amended by any documents subsequently issued by Ofgem in connection with the Tender Round or a Tender Exercise).

'Third Package Regulations' means the Electricity and Gas (Internal Markets) Regulations 2011.

'Transfer Agreement' means the agreement to transfer any property interests, rights or liabilities in or relating to Transmission Assets from a Developer to a Successful Bidder in respect of a Qualifying Project subject to a transitional Tender Exercise.

'Transitional Regime' means Tender Rounds for the grant of Offshore Transmission Licences where the Transmission Assets have been or are being constructed by Developers, and where the Developer meets certain Qualifying Project requirements and tender entry conditions to the satisfaction of the Authority.

'Transmission Assets' has the meaning given in paragraph 1(3)(a) of Schedule 2A to the Electricity Act.

'Transmission Services' has the meaning given in the standard conditions of an Offshore Transmission Licence.

'Transmission System Operators' means Transmission System Operators across the European Union. In Great Britain this means the NETSO.

'User' means any person who is granted access to and use of the Portal.

'User Agent' means any person authorised by the User to access and use the Portal and/or acting as a representative or agent of the User in accessing and using the Portal.

'User Agreement' means an agreement governing the access and use of the Portal by Users.